



**International Covenant on Civil and
Political Rights**

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Human Rights Committee
101st session

Summary record of the 2778th meeting*

Held at Headquarters, New York, on Wednesday, 16 March 2011, at 3 p.m.

Chairperson: Ms. Majodina

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This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.



11-26504 (E)

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

*Third periodic report of Slovakia
(CCPR/C/SVK/3, CCPR/C/SVK/Q/3 and Add.1)*

1. *At the invitation of the Chairperson, the members of the delegation of Slovakia took places at the Committee table.*
2. **Mr. Koterec** (Slovakia), presenting the third periodic report of Slovakia covering the period November 2001 to December 2008, said that Slovakia had made significant progress in implementing civil and political rights since its last periodic report. Its existing legislative, institutional and procedural mechanisms for the protection of human rights met the highest European standards.
3. Proper implementation of the Covenant required an appropriate legislative framework and, in 2004, Parliament had adopted the Anti-discrimination Act that provided protection against all forms of discrimination and enabled victims to seek adequate judicial remedies. The Act also extended the powers of the National Centre for Human Rights, whose main tasks included the provision of legal assistance to victims of discrimination and intolerance. The Centre, which was an autonomous body, published annual reports on the observance of human rights in Slovakia.
4. The Government itself regularly updated its Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia and Other Expressions of Intolerance and had enacted a new Criminal Code that had come into force at the beginning of 2006 and facilitated the promotion of civil and political rights.
5. The principle of equal opportunities was enshrined in all relevant laws and regulations. The Labour Code ensured equal treatment for men and women in access to employment, remuneration, career development and vocational training. Support for family services had been increased, among other measures aimed at reconciling family and professional life.
6. The twelve national minorities in Slovakia were perceived as an asset enriching society and their rights were guaranteed by the Constitution and more than 30 specific laws. In addition, the Government had undertaken to create the conditions for members of national minorities to exercise their right to participate in public affairs and had established the Council for Human Rights, National Minorities and Gender Equality as a permanent advisory body empowered to issue opinions on Slovakia's compliance with its international commitments in the area of human rights and to intervene in the relevant reporting procedures. The Government had created the post of Deputy Prime Minister for Human Rights and Minorities to oversee the implementation and observance of human rights, equal treatment and gender equality.
7. The Government's Plenipotentiary for Roma Communities, an advisory body, had implemented comprehensive measures to improve the situation of those communities and facilitate their social integration. Despite slow progress, the Government was committed to supporting their full participation in the country's social, cultural and political life based on their status as a national minority. A five-year plan was under way aimed at creating a more favourable environment for marginalized Roma communities based on permanent social development, particularly in the area of education, health, employment and housing.
8. Dialogue between the Government and non-governmental organizations (NGOs) took place mainly through the official NGO Council set up to support humanitarian and charitable organizations.
9. Since Slovakia's accession to the European Union and the Schengen Area, the number of foreigners residing in the country had continued to rise, and directives regulating the status and rights of European Union nationals had been incorporated into domestic law in order to stabilize their legal situation. Meanwhile, the number of asylum-seekers had decreased, and asylum was granted to only a fraction of applicants, owing mainly to non-compliance with the relevant criteria.
10. **Ms. Motoc**, referring to question 1 on the list of issues (CCPR/C/SVK/Q/3), requested information on any measures taken to encourage domestic courts to invoke the Covenant. Slovakia had made an effort to implement international laws, but its approach was possibly more in keeping with the European Court of Human Rights than the United Nations Human Rights Committee.
11. The Committee believed that it was vital to give the Constitutional Court jurisdiction with regard to

international treaties so that it could ensure compatibility between such treaties and domestic legal provisions. According to the written reply to question 2, the Government had been unable to amend the Constitution as recommended, in part owing to upcoming elections. The elections having taken place, reports from NGOs indicated that the new Government was determined to protect human rights. It would therefore be useful to know whether it was interested in amending the Constitution, a procedure that required a majority vote in Parliament, and whether the Government could count on sufficient support to attain that majority.

12. Some years earlier, the Constitutional Court had declared that there were limits to positive discrimination. The Committee required more information on the constraints imposed by that ruling.

13. Regarding the protection of minorities, the Council of Europe had recently issued a report that raised concerns about the health care, social protection, housing and, above all, education of the Roma population. Based on the most recent reports by NGOs working with people with disabilities, many Roma children had been placed in special classes for disabled children on the grounds that the Roma did not have the same intellectual capacity as other Slovak children. She wondered if programmes had been established to replace special education for those children. Unemployment was extremely high among the Roma, especially in urban areas, and it would be useful to know what measures Slovakia was taking to overcome the problem, which was common to all European countries with Roma communities.

14. The Committee understood that Slovakia had taken some measures with regard to the sterilization of Roma women (question 12). Nevertheless, several NGOs had reported that the practice continued and, although hospitals required consent, there was concern that it might not be informed consent owing to low levels of education among the Roma community.

15. Throughout Europe the Roma were stereotyped, affecting their integration into society. The Committee would like to know to what extent stereotypes had been eliminated in Slovakia, and also the exact size of the Roma community. It appeared that the figure cited in the most recent census was incorrect, because many Roma did not declare themselves as such fearing discrimination. The delegation should explain how

Slovakia was planning to obtain better official statistics.

16. Regarding question 7, Slovakia had ratified the Convention on the Rights of Persons with Disabilities and had drawn up legislation to implement it. The report provided many examples of policies, but the Committee would appreciate additional information about the actual results; also whether the country had professionals trained to work with people with disabilities and what specific actions had been taken to assist them.

17. Impressive statistics had been provided on gender equality. However, it would be useful to know how many women occupied senior positions in both the public and the private sector. It appeared that, as in other former communist countries, most Slovak women opposed the introduction of a quota system, which led to the question whether women had truly been educated about their rights.

18. **Mr. Bouzid**, referring to question 3, said that the actual legislation regulating the National Centre for Human Rights did not conform to the principle of equality, nor did the law provide it with sufficient authority to defend human rights. The Centre did not report to Parliament or any other institution and played no role whatsoever in encouraging the State to ratify international human rights treaties or to adapt national legislation to such instruments. Moreover, its current composition did not guarantee sufficient representation to civil society and those working to promote human rights in Slovakia; lastly, it did not enjoy financial independence.

19. In its written reply, Slovakia had said that the Government planned to introduce changes to bring the Centre in line with the Paris Principles as part of the amendment to the Act on the establishment of the Centre; clarification was required as to when the process of amending the act would take place. It would also be useful to know whether the Centre played a mediation role, whether individuals had recourse to mediation, whether mediation resulted in reparations and, if so, the type of reparations awarded. Furthermore, did the Centre conduct research to assess the public's understanding of its rights? Lastly, he asked about the relationship between the Centre and the office of the Ombudsman, which had been established to protect human rights.

20. Regarding non-discrimination (question 4), the Anti-discrimination Act was important, but several Government and NGO reports indicated that the law had not been implemented. The courts had heard very few cases relating to discrimination and those examined had frequently been filed by civil society, which assumed the costs. Moreover, the courts did not accord importance to cases involving the Roma. According to the periodic report (para. 26), the National Centre for Human Rights was processing petitions and complaints concerning discrimination, but NGOs reported that it did not bring cases before the courts; that contradiction should be clarified. He also wondered how willing the Government was to work with civil society to implement legislation on non-discrimination.

21. Additional information was required on the measures taken by the State to ensure that discrimination did not lead to racial violence, whether there was statistical evidence that such measures had resulted in a decline in such violence and what other minorities in addition to the Roma suffered from racial violence.

22. The report referred to the procedure for expelling aliens suspected of committing certain crimes; however, the European Court had asked the Government not to extradite them owing to the risk of torture in their countries of origin. The Committee would like to know the Government's position on that issue. Article 62 of the Act on aliens defined the situation of foreigners who were legally resident in the country in respect of extradition; however, the delegation should explain the situation with regard to illegal residents.

23. The integration of refugees (question 9) was currently financed by the European Union. It was unclear why the State did not have an integration programme.

24. Regarding question 12, the Government had amended the law on sterilization and introduced the concept of informed consent. However, based on reports by NGOs, the amendment had not been applied, and it would be interesting to know whether hospitals had adopted ad hoc measures to obtain consent. The Government's assessment of the situation had focused on the period 1992-2000 rather than the entire communist era and looked only at genocide while ignoring other possible crimes; in addition, it failed to

examine the situation of non-Roma women. He wished to know whether the Government had created an independent committee to examine the matter and to provide reparation, since most victims could not afford to file a case before the courts.

25. **Ms. Chanet** said that the delegation should provide further clarification why the Covenant was not invoked by the Constitutional Court. Was the constitutional amendment the only legal obstacle or did judges and lawyers have insufficient knowledge of the Covenant? The delegation had mentioned that reforms were under way to give the Constitutional Court jurisdiction in the application of international treaties, but they were dependent on the Government obtaining a sufficient parliamentary majority; it would be interesting to know whether an alternative solution existed.

26. The Committee also required more information on the October 2005 Constitutional Court ruling, since it appeared that the decision condemned positive discrimination and could lead to an abuse of human rights. The Committee needed to be able to read the ruling so that members could grasp its implications and understand how discrimination was combated in Slovakia.

27. When describing the steps taken to eliminate discrimination on the basis of sexual orientation (question 8), the State had indicated that sexual orientation was tacitly included in the 2008 amendment to the Anti-discrimination Act. However, although laws were necessary, practice was more important. Accordingly, the delegation should clarify whether such discrimination was prohibited and whether there was a body that specifically monitored the situation. It should also provide examples of good practice and of the punishments imposed on those guilty of discrimination.

28. Forced sterilization based on systematic plans or ethnic origin was one of the most serious international crimes. The new law had gone some way towards mitigating the problem and established the concept of consent. Nevertheless, NGOs believed that forced sterilization persisted. She asked whether the Government had taken measures to elucidate such cases and to monitor informed consent. It was unclear how people expressed their consent and how they understood it, and how those who were illiterate gave consent. She asked if there was a medical ethics

committee and how systematically leading people to choose sterilization could be justified.

29. **Mr. Iwasawa** said that Slovakia was one of few countries where the Constitution provided explicitly that international human rights law prevailed over domestic laws. However, it was to no avail if the Covenant was not invoked before the courts. He asked whether citizens were aware of the Covenant and whether sufficient efforts were being made to disseminate information on its provisions.

30. On the issue of violence against women (question 11), it appeared that the National Action Plan for the Prevention and Elimination of Violence against Women had taken the recommendations of the Committee on the Elimination of Discrimination against Women into account. Nevertheless, concerns remained because the report (para. 65) referred to secondary victimization by bodies applying legislation. The delegation should provide further information and explain the problems that had occurred and the measures that had been taken to address them. Both the report and the written replies stated that victims of violence against women need not give consent to the prosecution of an offence. Consequently, the Committee wanted to know how the State could ensure that the victim's will was sufficiently respected; the delegation should also explain the procedure and the role of the victim.

31. The statistics on sentenced offenders and on the sentences handed down to perpetrators were appreciated, but there was insufficient information on the types of sanctions. Were sanctions other than imprisonment available, such as restraining orders or fines? According to the written replies, marital rape was a criminal offence. Nevertheless, since rape could involve many complex issues, further information was required; for example, the delegation should clarify whether marital rape was viewed as a crime by the courts in practice, and give examples of cases. The list of issues had invited the State party to comment on the allegedly low reporting rate of sexual violence against women; since no information had been provided in the written replies, he asked for the delegation's comments.

The meeting was suspended at 4.15 p.m. and resumed at 4.45 p.m.

32. **The Chairperson** invited the members of the delegation to respond to the questions raised by the Committee.

33. **Ms. Vozáryová** (Slovakia), addressing the issues raised in relation to questions 1 and 2, said that the Constitution established the hierarchy of international treaties within Slovak legislation, and international human rights treaties had supremacy over domestic law. Regarding the jurisdiction of the Constitutional Court to rule on the compatibility of domestic legislation with all international treaties, not only those concerning human rights, the Constitutional Court acted when asked to do so by the President, following Parliament's agreement, or on its own volition. There was an ongoing debate in Parliament, led by the Ministry of Justice, regarding the primary responsibility for initiating action.

34. Regarding the application of the Covenant by the courts, international treaties ratified by Slovakia were incorporated into domestic law, and thus transformed into specific legal entitlements. Individuals had recourse to domestic law if they considered that their rights had been violated.

35. **Ms. Jančulová** (Slovakia), addressing the questions on discrimination and related issues, said that the Anti-discrimination Act reflected the fact that the Constitutional Court had ruled that the aim of temporary positive measures was to ensure due process when dealing with inequalities so that unequal situations were dealt with appropriately. According to the Constitutional Court's findings, the aim of temporary positive measures was merely to eliminate the consequences of prior discrimination and unequal opportunities. Consequently, in 2008, the Anti-discrimination Act had been amended for the second time to establish temporary positive measures that could be applied if there had been proven discrimination in order to remove or decrease the inequity; also to expand the coverage of the law and to help remove the social and economic disadvantages resulting from age and disability. The Act included measures aimed at supporting the interests of members of disadvantaged groups and communities, promoting their access to education, health care, culture and housing services, creating equal opportunities in access to job training and employment, and disseminating information on employment opportunities. Temporary positive measures could only be adopted in areas stipulated in the Anti-discrimination Act and were only retained until the inequality leading to their adoption had been removed.

36. **Mr. Pollák** (Slovakia) said that the Anti-discrimination Act did not allow Slovakia to

address the Roma issue by means of positive discrimination. The main goal of the Roma policy was to ensure the equal and dignified coexistence of the majority and minority populations by removing inequalities, mistrust and violence. The goal was to integrate minorities physically into mainstream society and, above all, to provide them with the opportunity to realize their aspirations and use their skills, on an equal basis, so that they could live a decent life. Hence the concept of integration could be found in all strategic documents, as well as in national and local programmes and projects.

37. According to the 2001 census there were 89,000 Roma in Slovakia, but unofficially there were around 360,000. A new census would be conducted in May 2011 and formal and informal efforts were under way to raise the awareness of minorities about its potential benefits and thus increase the probability of a more accurate result. About half the Roma were already integrated, but the other half still lived in around 600 highly disadvantaged settlements.

38. Current public opinion among most of the Slovak population considered the integrated Roma to be their neighbours and colleagues. In the case of the settlements, poverty had to be overcome, before dealing with the issue of discrimination; however that was easier said than done as the problem had been long neglected. The first goal was to identify professionals to work with the settlement communities. In the past, many programmes and projects had been initiated, including community centres, health care facilities, and Roma police, and the most successful ones should be maintained. However, it was necessary to establish standards and define the role of the State and of civil society organizations.

39. The legislation on socially excluded communities automatically included Roma settlements, enabling the Government to be more effective when addressing the multifaceted issues of the Roma communities. Roma citizens could be provided with temporary employment doing public benefit work, including the required training and requalification. However, changes were required in the social benefits system to motivate recipients, most of whom were Roma, to look for work. Currently it was more advantageous not to work due to low salaries and high benefits.

40. Regarding the representation of women in the public administration, as a result of the December 2010

elections, the first Roma female mayor had been elected, and both the co-President and the Prime Minister were women.

41. **Ms. Ondrášová** (Slovakia), referring to the issue of education for the Roma, said that the 2008 School Act dealt with the issue of special schools, schools for persons with disabilities and education for foreigners, on the basis of equal access to education and training. All forms of discrimination were prohibited, particularly segregation, and special types of education were provided based on a student's potential. The law also provided for children with special educational needs, especially disabled children, but also gifted children, as well as students from a socially disadvantaged background.

42. Few Roma children attended regular schools, and many had been placed in special schools as a form of assistance. However, the law had recently been amended to establish that children could only be transferred from regular schools to special schools following the expert opinion of a doctor or an educational centre confirming that they suffered from some form of disability. A major survey of schools had been conducted in 2005 which had identified where children had been wrongfully placed in special schools. Since then, the State had inspected about one fifth of state schools and not found any children who had been transferred without a verified mental disability.

43. School attendance was compulsory only at regular elementary schools and children could not be placed in special schools merely because of poor grades or inattention. Following the adoption of the 2004 Anti-discrimination Act, Slovak schools adopted two forms of integration: the integration of children with special needs who were included in classes with other children but received special attention based on their individual educational needs, and the establishment of special needs programmes for children with problems relating to hearing, eyesight, motor skills or autism, with specific criteria for each case.

44. Records had to be kept of children placed in a special school or class, and the school principal had to inform their parents and explain the advantages and disadvantages and any other significant factors. Parents then signed a consent form which was sent to the educational authorities for approval. The School Act included a special article on education for foreigners.

Children of asylum-seekers or refugees and minors without guardians were all provided with education funded by the national budget under the same conditions as Slovak children. In addition, language training was provided to remove language barriers.

45. **Ms. Liptáková** (Slovakia) said that Act No. 576 (2004) on health care and health care-related services had defined how sterilizations could be conducted. Since its adoption, sterilizations had been carried out only at the applicant's request and at least 30 days after informed consent, which could be revoked at any time; there was no systematic sterilization. Health personnel were obliged to provide an adequate explanation ensuring that the patient understood what was involved; the briefing had to include information on alternative methods of contraception and on the reasons for and the medical consequences of sterilization. The procedure was paid for by the individual, not from the public health budget. In 2004, an autonomous body had been established to monitor health care and, to date, it had not recorded any complaints of illegal sterilizations. The non-governmental organizations mentioned should inform the Government of specific cases with the corresponding evidence to support their allegations.

46. **Ms. Jančulová** (Slovakia) said that the Government had stated in its 2010-2014 Manifesto that it wished to promote the flexible and efficient functioning of all institutions and mechanisms aiming at protecting human rights, including the National Centre for Human Rights, which was part of the overall network of bodies monitoring human rights and equality. The Centre's mandate needed to be strengthened by law so that it could monitor court decisions, including sanctions imposed, and additional tasks should be defined so that it could encompass all areas, including migrants and prisoners. Furthermore, its independence and plurality should be strengthened in line with the Paris Principles.

47. Currently the tasks that the Centre could perform were limited by existing laws that did not fully reflect the needs or international standards and did not allow it to achieve its full potential. The Act establishing the Centre required amendment based on the Paris Principles and on the lessons learned to date. Emphasis should be placed on monitoring the entire spectrum of human rights, and on transparency and adequate public control and scrutiny. Based on Slovakia's international commitments, the Centre required an appropriate budget not only for itself, but also for its seven

regional offices. The Government was currently preparing an analytical report of the Centre's activities with conclusions and recommendations.

48. Regarding relations between the National Centre for Human Rights and the Ombudsman, the Centre was an autonomous body whose duties included providing legal assistance to victims of discrimination. With the 2008 amendment of the Anti-discrimination Act, an action could be filed before the courts when group rights had been violated or if an action was contrary to public interest, not just when an individual sought redress for discrimination. On the other hand, the Ombudsman was an independent body established by law to protect the fundamental rights of physical and legal persons in actions before public administration bodies in the case of acts or omissions that violated Slovak law.

49. The Anti-discrimination Act also included provisions relating to sexual minorities and employment. The office of the Deputy Vice Prime Minister for Human Rights was preparing a draft amendment concerning the principles of equal treatment regardless of religion, disability, age or sexual orientation that established regulations for dealing with cases of discrimination in employment. The Government supported NGOs working to raise public awareness with regard to any type of minority.

50. **Ms. Vozáryová** (Slovakia) said that, as a member of the Schengen Agreement, Slovakia was responsible for foreigners residing within its territory. No one legally in the country could be subject to refoulement, nor could anyone be extradited to a country where there was threat of torture or persecution based on religion, race or political opinions or where a death sentence had been imposed or proceedings were under way that could result in capital punishment. Under Slovak law, investigations involving foreigners always began by examining whether such obstacles to administrative refoulement existed; and if they existed the individual was allowed to stay.

51. In the case of Mustapha Labsi, an Algerian extradited to Algeria contrary to the recommendations of the European Union due to the threat of torture, the individual had already been sentenced for acts of terrorism in France and to expulsion from that country. He was therefore extradited to Algeria following two diplomatic guarantees provided by the Algerian Government that he would not be sentenced to death or

- life imprisonment. Slovakia was currently facing proceedings by the European Court of Human Rights, as he could be subjected to torture.
52. Regarding the expulsion of illegal residents, the European Court of Human Rights had declared that asylum-seekers should not be returned to Greece because that country did not offer adequate conditions for humane treatment; Slovakia would abide by that ruling.
53. **The Chairperson** invited the members of the Committee to pose follow-up questions.
54. **Ms. Motoc**, returning to the issue of sterilization, said that the report received from NGOs referred to a mission to investigate the possible genocide of Roma in Slovakia over the period 1997 to 2002. The organizations had complained that the mission had not investigated other related crimes.
55. On the subject of discrimination towards Roma in Eastern Europe, she asked whether Slovaks felt that their image internationally had been affected by the Roma who had emigrated and whether that had led to discrimination at home. It appeared that the delegation viewed the Roma issue primarily as a social problem, but it was also necessary to consider issues of identity. A balance should be sought between the two approaches.
56. **Sir Nigel Rodley** said that the Committee against Torture had recently expressed concern that the body responsible for investigating ill-treatment in Slovakia might not be sufficiently independent. He asked whether that concern had been followed up. The Committee also regretted the lack of information on whether an independent body had been established with the right, *inter alia*, to make unannounced visits to all places of deprivation of liberty, including police stations and pretrial detention facilities. It would be useful to know what measures of protection were in place for people in police detention and whether those measures were monitored by an independent body.
57. He trusted that those Roma women who had appeared before the investigation into sterilizations had not been confronted by intimidating language which could have been a deterrent to collaboration. The delegation should provide more information and statistics on the number of sterilizations that had taken place since the end of the communist regime and also whether statistics existed on the distribution of sterilizations. It would also be interesting to know the percentage of sterilizations of women of Roma origin and of other ethnic backgrounds, as opposed to the general population, because that could reveal how the law was being monitored.
58. **Mr. Bouzid**, referring to the special group set up to investigate all cases of forced sterilization in 2007, said that the delegation should provide information on the cases that had been brought before the group and the results obtained to date.
59. **Ms. Vozáryová** (Slovakia) said that the allegations of the forced sterilization of Roma women in eastern Slovakia had raised major concerns in the Government, which immediately took action to investigate them and to initiate criminal proceedings. The investigative team had endeavoured to be impartial and was composed of people from a different region, headed by a woman, and assisted by four female investigators. Respected institutions had been asked to provide expertise, and the Health Ministry had appointed a gynaecologist/obstetrician to conduct an independent expert appraisal on 67 obstetric departments in Slovak hospitals. No criminal offences were uncovered; nevertheless, the investigation revealed shortcomings in legislation and also identified some administrative errors. None of the experts found any instances of discrimination against Roma women, or their segregation. In regions where a higher proportion of Roma women could be expected among the patients, they found a much lower frequency of sterilizations and caesarean sections among the Roma. Hence, the team found that no law had been violated and that sterilizations were conducted regardless of the ethnicity of patients.
60. The allegations made by the non-governmental organizations referred to sterilizations conducted in the interests of protecting the health or even the life of the women and were in keeping with the laws applicable at the time. The Committee on the Elimination of Discrimination against Women had been informed that a woman had died following the procedure. Based on information provided by the Government, the Committee had decided to cease examining the matter. However, it had expressed concern that illegal or forced sterilizations could have been committed in Slovakia in the past and recommended that the Government should make reparation to victims. As a result, the Government had taken measures to ensure non-discriminatory access to health care, and to define

voluntary and informed consent to sterilization. A new crime of illegal sterilization had been introduced into the Criminal Code, and a 30-day waiting period was mandatory between consent and the procedure.

61. **Mr. Pollák** (Slovakia) said that the Roma population of Slovakia was undergoing a major emancipation process. Indeed, the Roma problem did not involve social issues alone; nevertheless, poverty was concentrated in the Roma settlements where social issues must be resolved. The range of actions was much broader; for example, a standardized Roma language had been adopted and a variety of cultural activities supported.

62. Regarding the migration of Roma abroad in the 1990s, many destination countries of large numbers of Roma were taken by surprise, in particular by the speed with which it had occurred. Nowadays, even though Slovak Roma travelled abroad, they were not a source of major problems. Most had migrated to the United Kingdom, and Slovakia was in constant communication with the national authorities there who were continually monitoring the situation.

63. With regard to the allegations of specific police officers ill-treating Roma children (question 13), charges of abuse of public authority had been brought and criminal proceedings filed. The district court that heard the case against 10 officers had added charges of bullying and extortion, and all the accused were sentenced as charged. The judgment was not yet final as an appeal could be filed.

The meeting rose at 6 p.m.



International Covenant on Civil and Political Rights

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Summary record of the first part (public) of the 2779th meeting

Held at Headquarters, New York, on Thursday, 17 March 2011, at 10 a.m.

Chairperson: Ms. Majodina

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(continued)

Third periodic report of Slovakia (continued)

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11-26554 (E)



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The meeting was called to order at 10:05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Slovakia (continued)
(CCPR/C/SVK/3; CCPR/C/SVK/Q/3 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Slovakia took places at the Committee table.
2. **The Chairperson** invited the delegation to continue its replies to the questions raised by the Committee at its previous meeting.
3. **Ms. Vozáryová** (Slovakia), replying to questions about measures of protection for people in detention centres, said that her country applied international treaties requiring it to treat detainees in a humane manner and to have effective controls to ensure adherence to human rights standards. Internal controls were carried out by the inspection services of the relevant ministries: the Ministry of Internal Affairs for police detention centres; the Ministry of Justice for jails and prisons, and the Ministry of Health for cases in which personal freedom was restricted for health-related reasons. In addition, an inspection service reporting directly to the Ministry of Internal Affairs conducted independent investigations of crimes allegedly committed by police officers. External controls were effected by the Prosecution Office, which made regular and spot inspections of detention centres, and by the Ombudsman, who was legally and constitutionally entitled to check such facilities at any time for human rights compliance. Furthermore, as a member of the Council of Europe, Slovakia was subject to visits and assessments by the European Committee for the Prevention of Torture and complied with its recommendations.
4. With respect to criminal sanctions for perpetrators of domestic violence, Slovak legislation had recently undergone a number of changes. The police had been given the authority to impose a 48-hour restraining order against alleged perpetrators of domestic violence, pending interlocutory injunction. Rape was recognized as a criminal offence in and outside marriage, and the penalties for rape of related persons were high. In addition, new action plans were implemented at three- to four-year intervals and would soon provide administrative or legislative mechanisms to assist women threatened by domestic violence.
5. **The Chairperson** invited the members of the delegation to pose questions on issues 13 to 24 of the list of issues, as well as any remaining follow-up questions regarding issues 1 to 12.
6. **Mr. Thelin** said that Slovakia's recent accession to the European Union was of considerable importance, as the rigorous requirements for membership allowed a strong assumption of compliance with human rights standards.
7. With respect to question 13 regarding investigations and prosecutions against police officers, he would like clarification on the number of complaints filed. While the written reply to that question implied that there had been very few, the reply to question 15 indicated that 10 per cent of all financial compensation had been awarded to victims of torture and ill-treatment, which was somewhat contradictory. A breakdown of complaints handled by the Ministry of Internal Affairs, the Prosecution Office and the Ombudsman would also be helpful.
8. At the previous meeting, he had been pleased to learn that the police officers involved in the Košice incident had been convicted. Although he was aware that the verdict could be appealed, he would like know the sentences imposed and whether compensation had been ordered for the six victims. In another, less well-publicized, anti-Roma incident in May 2009, police in the village of Huncovce had encircled a Roma settlement, entered houses, shouted racist epithets at women and children, destroyed property and arrested several Roma. He wondered if any formal charges had been brought against the perpetrators and if any disciplinary action had been taken.
9. Also on the issue of the Roma, he would like to know what steps had been taken to comply with paragraph 19 of the Committee's Concluding observations (CCPR/CO/78/SVK), which had urged Slovakia to take steps to gather statistical data reflecting the current size of the Roma population.
10. Paragraph 65 of the written replies mentioned a programme to promote positive police involvement in Roma communities. He wondered whether that programme was part of the Solidarity-Integrity-Inclusion 2008-2013 medium-term concept. He also wished to know what mechanisms would be used to assess the programme's effectiveness. It was easy to adopt measures, harder to implement them and harder

still to evaluate the results. Benchmarks, follow-ups and comparisons were imperative.

11. In reference to question 14 regarding persons placed in detention cells, it would be useful to have statistics on the number of requests for medical attention for alien detainees in order to form some idea of how well the police complied with the prompt medical treatment rule. He wondered whether video and/or audio recordings made in detention cells were saved, since archived recordings might be useful to investigative bodies carrying out internal or external investigations, as well as to individual aliens wishing to file claims. Also, it was unclear whether recording equipment was available in detention centres for aliens, or only in general facilities. Concerning the detainee's right of access to a lawyer, he would like to know how much time would be considered undue delay. Lastly, he wondered whether aliens held in custody were informed of their right to medical attention, since doing so might require an interpreter.

12. Turning to question 15 concerning the reparation of victims of torture and ill-treatment, he asked if Ministry of Justice decisions on reparation were subject to review or appeal outside the Ministry. He also wished to know whether compensation awarded under the Ministry of Justice compensation mechanism described in the written reply was paid by the awarding body and whether the Ministry was bound by court decisions.

13. Referring to question 18 on procedural safeguards to protect the principle of non-refoulement, he said that he was grateful for the information conveyed at the previous meeting regarding the circumstances of the extradition of Algerian national Mustapha Labsi to Algeria. However, he was concerned by an Amnesty International public statement, according to which the then-Minister for Internal Affairs had made light of the Court's penalty of "only a couple of thousand euros" for non-compliance with interim measures. He wished to know if the Minister had been misquoted, because if not, his disrespect for the decision of a supranational human rights body — perhaps a vestige of Slovakia's communist past — might encourage similar attitudes among his subordinates.

14. In reference to question 19 on the procedure for determining refugee status, he noted that, according to the written reply, the determination of the police department could be appealed to increasingly higher

levels of the Ministry of Internal Affairs and, subsequently, to the competent regional court. He wondered if it could ultimately be appealed to the Supreme Court or even the Constitutional Court. He also wished to know to what extent legal counsel was available at the various levels, especially at the pre-court level. In addition, it was not clear if the Legal Aid Centre provided aid only for Ministry of Internal Affairs proceedings or at other stages as well.

15. **Ms. Chanet** said that she was still awaiting a reply to her question regarding the Constitutional Court's decision of October 2005 banning positive discrimination. Although the delegation was trying to answer all of the Committee's questions fully, it sometimes seemed as if its focus was on social, economic and cultural rights, not human rights.

16. Paragraphs 188 and 189 of the periodic report gave different maximum times — 24 hours, 48 hours and 72 hours — within which a detained person must be released or referred to a court. She would like to know the standard maximum time, as well as who had the authority to increase the length of detention and to what type of court a detainee could be referred. Furthermore, it was not clear at what point the detainee was allowed the counsel of a lawyer, nor the length and quality of that counsel. She wondered, for example, if the lawyer was given access to the case file or could be present during questioning.

17. Regarding legal assistance, she would like to know the financial eligibility requirements for legal aid in the case of criminal proceedings.

18. She was pleased to see that civilians were no longer tried in military courts except in cases of crimes of national security, and asked if such cases were common.

19. **Mr. Iwasawa** said that it was still unclear why the Covenant had never been invoked before the courts in cases of domestic violence against women. With respect to question 20 requesting information about the motion before the Constitutional Court to review the compatibility of the Press Act with the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms, the written reply, which merely cited the numbers of the articles subject to review, was not informative in the absence of the texts. While he had managed to track down a copy of the Constitution, it would be useful to have a copy of the Press Act or its relevant articles made available in a

working language of the Committee or, failing that, an explanation of the aspects at issue, both in the country and before the court. A footnote in the periodic report cited a *Slovak Spectator* website, according to which opposition members of Parliament had filed the motion because they did not think that the media should be required to protect its sources. He would like to know if that assertion was correct and, in general, the positions and arguments of both parties. He would also like to know if the Constitutional Court had ruled on the matter since the written replies had been finalized.

20. The reply to question 22 on the corporal punishment of children seemed to imply that corporal punishment was not explicitly criminalized in alternative care settings and schools. If that was the case, he would like to know if Slovakia had plans to prohibit it explicitly in those settings. Regarding corporal punishment in the home, he would appreciate the delegation's comments on research by the Bratislava International Centre for Family Studies indicating that the overwhelming majority of Slovak parents considered corporal punishment acceptable.

21. Turning to question 24 regarding the dissemination of information on the Covenant and its Optional Protocols, he wondered whether the reason that no provisions of the Covenant had been invoked before or by the courts was that judges, prosecutors and lawyers were not trained in the area of international human rights treaties. The written reply mentioned a newly established Council of the Government of the Slovak Republic on Human Rights, National Minorities and Gender Equality, whose duties included disseminating information on the Covenant and deliberating on all periodic reports to be submitted to treaty bodies. He would appreciate further details about the Council, including how its members were elected, what its functions were, how it would disseminate information and what its "deliberations" on periodic reports would entail.

22. **Ms. Motoc** wished further information about how the Constitutional Court's 2005 decision banning positive discrimination affected laws on national minorities. Regarding the forced sterilization of Roma women, an explanation of why the Government did not consider it genocide would help the Committee to understand the phenomenon not only in Slovakia but in other countries of Central Europe as well.

23. **Sir Nigel Rodley** had been pleased to learn that the sterilization rate was lower among Roma women than in the general population. He wished to know the source of the statistics quoted and the methodology used to arrive at them.

24. He was glad to note that the right of conscientious objection was guaranteed under the Slovak Constitution. In that light, he wondered whether Slovak law provided for persons who became conscientious objectors after joining the military.

25. *The meeting was suspended at 10:55 a.m. and resumed at 11:30 a.m.*

26. **The Chairperson** invited the delegation to respond to the questions raised by the Committee.

27. **Mr. Pollák** (Slovakia), replying to the questions about Roma issues, said that the 10 Košice police officers had been indicted and stripped of their jobs shortly after the incident. In early 2011, the district court had found them guilty of abuse of power by a public official and had sentenced them to prison terms ranging from 4 to 10 years in view of the racial and ethnic motivation of the crime. Under Slovak law, compensation was determined in separate civil proceedings once the criminal verdict was no longer subject to appeal, so that no compensation had yet been set. He could not comment on the Huncovec case, which was still open. However, that and similar cases had led the Ministry of Internal Affairs to strengthen the number of specially trained police officers working in Roma communities.

28. With respect to monitoring mechanisms, new action plans were nearing completion in the areas of housing, health, education, employment and social inclusion for Roma communities. The Office of the Plenipotentiary for Roma Communities would be developing a new strategic medium-term plan, and in doing so it would review all of its pro-Roma actions. The action plans precisely defined responsibilities, timing and deadlines so that data would be comparable for the purposes of updating and review.

29. When Slovakia had held the presidency of the Decade of Roma Inclusion, the Czech Republic had proposed creating a joint system to monitor and review the action plans of all member States, but it had proved too difficult to find comparable indicators across all countries. Although the Slovak Statistical Office could not by law collect ethnically linked data, the Office of

the Plenipotentiary did have some internal data and had used it to create the 2004 map of Roma communities, which it was in the process of updating. The map was important because it allowed organizations applying for funding from European structural funds to support their applications with numbers.

30. As for the focus on social and economic problems, the Office of the Plenipotentiary looked at the life of the Roma communities as a whole, which of course included issues of discrimination. It had been cooperating very closely with the European Roma Rights Centre in Hungary on respect for the human rights of Roma in Central Europe, as well as with the organization People against Racism (*Ludia proti rasizmu*) in Slovakia. In 2010, the Office had lodged several actions still before the courts involving often racially motivated violations of Roma human rights.

31. **Ms. Ondrášová** (Slovakia) said that, as mentioned at the previous meeting, the 2008 School Act specifically prohibited corporal punishment in all children's facilities, from orphanages and kindergartens to dormitories and high schools. An action plan for solidarity and inclusion of Roma through the university level had been adopted in April 2008. The Ministry of Education had since developed an implementation schedule, based on the availability of State and European funding, that included quarterly progress assessments. The action plan provided support through the Ministry of Labour, Social Affairs and Family for children from disadvantaged backgrounds who had been placed in special needs categories and, under the School Act, required individualized curricula and educational environments. For the 2010-2011 academic year, €5.8 million had been set aside to assist 65,590 such socially disadvantaged children. The State School Inspectorate and various schools were monitoring progress, but it was too early to assess the overall results. The category of teacher assistant, created in 2002 to provide extra help for Roma children, had been supplemented under a recent law on pedagogical and professional staff by two teacher-level categories for specialists in children from socially disadvantaged backgrounds. An upcoming national project for Roma inclusion provided for a two-year deployment of 4,000 such pedagogical staff, including 400 teacher assistants, to 200 regular elementary schools, where day-long programmes would help disadvantaged children catch up with their peers and complete the regular curriculum. The goal was to

correct the past practice of placing Roma children in special elementary schools where they had been unable to obtain a regular education. Because the project was funded not only by the State but also by a European Union operational programme for education, both the funding and the progress of the initiative would be monitored.

32. **Ms. Vozáryová** (Slovakia), responding to questions about the volume of complaints against police officers, said that she had statistics for the Ministry of Internal Affairs only and would need to provide information on complaints filed through the Prosecution Office and the Ombudsman in writing at a later date. The Ministry's inspection service had logged 2,164 possible crimes by police officers based on complaints filed by citizens or its own investigations, and a total of 151 police officers had been indicted for 183 crimes.

33. In response to the question as to whether video and/or audio recordings made in detention cells were available for future use, including for the investigation of complaints, she said that the Police Act did not make video or audio recording in detention cells mandatory, but where such equipment was present, recordings were made and were available for future use. That question was indirectly related to the issue of immediate access to medical care and legal counsel. According to the Police Act, if a police officer found that a person to be detained was intoxicated, injured or ill, or if the person claimed injury or illness, the officer was required to have the person examined immediately by a doctor to determine whether he or she could be placed in custody. If a person already in custody became ill or attempted suicide, police officers were required to take appropriate emergency measures to protect his or her life and health and to call a doctor. The Ministry's internal regulations required officers to give immediate notice to the next of kin in the event of death. Doctors had unlimited access.

34. According to the Police Act, persons in custody had the right to file actions and complaints. Determinations as to the lawfulness and duration of detention were the responsibility of the Prosecution Office.

35. Access to legal counsel without undue delay meant that a person in custody was entitled to telephone a lawyer immediately from the police station. If injured or otherwise incapacitated, he or she

was entitled to call as soon as able. Prisoners were given the opportunity for confidential communication with their lawyers.

36. Under the Constitution, everyone had a right to health protection, including aliens held in alien detention centres. Aliens were required to undergo medical examinations on admission, and medical care was available at all times from the staff doctor. Treatment beyond the capacity of the facility was provided in hospital under police escort. The Ministry of Internal Affairs covered all medical expenses except in the case of treatment for self-inflicted injury, which was paid by the patient. Detained aliens enjoyed the same right to confidential communication with a lawyer as suspected criminals. In the case of aliens, that right included the presence of an interpreter, whose services were provided immediately and paid by the State. Aliens could choose their own interpreter at their own expense. The Ministry's Legal Aid Centre provided free legal assistance to aliens facing expulsion or extradition, as well as to asylum-seekers.

37. The applicant's lawyer and interpreter were always present during asylum proceedings. The initial decision by the Migration Office of the Ministry of Internal Affairs could be appealed to the regional court, and the regional court decision could be appealed to the Supreme Court, whose decision was final. In addition, in accordance with the Slovak Constitution, an asylum-seeker could file a complaint with the Constitutional Court, which would review the proceedings for compatibility with the Constitution and international treaties. In such cases, the court of last instance was the European Court of Human Rights.

38. The case of Mustapha Labsi had gone through all instances. The European Court of Human Rights had considered that he should not be extradited from Slovakia until all remedies had been exhausted. She pointed out that the person quoted in connection with that case was a Ministry of Internal Affairs spokesperson, not the Minister himself. When read in full, his statement showed no intent to demean the authority or decisions of the Court. Slovakia had taken the risk of incurring a fine and appearing to violate human rights in order to protect the interest of its own national security and the security of the Schengen Area member States, with the conviction that it was not placing the individual in danger of torture or death in his homeland because he had already been convicted of terrorism in other countries.

39. With respect to the length of detention in police custody, the Police Act gave the police a maximum of 24 hours to determine whether a detainee should be released or handed over to the court. Under the Code of Criminal Procedure, the court then had 48 hours to decide whether the person held in remand custody should be released or remain in custody during investigation. In the case of specific, very serious crimes, that deadline was extended to 72 hours.

40. With respect to military courts, such courts had been abolished with effect from 1 April 2009. Crimes of national security were prosecuted in regular civil courts, and special criminal courts had been established for crimes of corruption and organized crime offences carrying prison sentences of eight years or more. As in the case of detained aliens, when suspected criminals were detained, they were entitled to the presence of a lawyer at their request. Furthermore, the Code of Criminal Procedure required all detainees to be represented by a lawyer in court proceedings in order to ensure that they understood each step of the proceedings.

41. **Ms. Jančulová** (Slovakia) said that the new Government Council on Human Rights, National Minorities and Gender Equality was a permanent advisory, coordinating and consulting body in the areas of fundamental human rights and freedoms; political and civil rights; economic, social and cultural rights; environmental protection rights; cultural heritage rights; the rights of national minorities and ethnic groups and the rights of children, which also had responsibility for enforcing equal treatment and the principle of equality, including gender equality. A primary function of the Council would be to take positions on Slovakia's internal fulfilment of international and European human rights obligations, including its obligations under the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. In that context, it would provide for the availability of information on the Covenant and would debate proposed draft reports on Slovakia's fulfilment of its obligations. It would also coordinate the policies and programmes of ministries and human rights bodies, cooperate with regions, NGOs, municipalities, scientific laboratories and academic institutions and would submit actions, recommendations and complaints within its jurisdiction. It would advise the Government on human

rights policy and on proposed measures and actions to improve respect for human rights.

42. The Council was composed of a chairperson (the Government-appointed Deputy Prime Minister for Human Rights and National Minorities), two deputy chairpersons (the Minister of Labour, Social Affairs and the Family and the Minister of Justice) and additional members appointed by the chairpersons. Committees of the Council had been created from previously established Government advisory bodies in the areas of human rights and support for civil society, although there were also two new committees.

43. With respect to question 24 on the involvement of civil society in the preparation of the periodic report, the report was based in part on information published by NGOs, which had been given the opportunity to participate in the intra-ministerial procedure for commenting on the report. Moreover, in view of the commitments in the most recent Government Manifesto to create a space for citizen participation in public matters and to invite NGOs to partner with the State on important social development issues, appropriate legislative reforms were under way with a focus on streamlining the apparatus and increasing efficiency. Lastly, on 2 March 2011, the Office of Plenipotentiary for the Development of Civil Society had been established to raise awareness of the importance of civil society and to create partnerships aimed at developing mechanisms for civic participation. The Plenipotentiary was a member of the Council on Human Rights, National Minorities and Gender Equality and would chair a new committee for NGOs.

44. **Mr. Koterec** said that, with respect to the Press Act, the Government would soon be submitting an important amendment to Parliament, which should be adopted in the near future.

45. **Ms. Vozáryová** (Slovakia), returning to the issue of forced sterilization, said that in 2003, as mentioned, the criminal investigation, aided by a special team within the police force and a commission of experts in gynaecology and obstetrics within the Ministry of Health, had concluded that there was no evidence of forced sterilization and had halted the investigation. Proceedings halted by investigators were subject to independent review by the prosecutor to ensure that no evidence had been overlooked. During the review process, the prosecutor had noted instances of

administrative and procedural errors by health staff, and the laws had been amended to prevent their repetition. Applicants for sterilization now had a 30-day period in which to withdraw their application. The case had been followed carefully by various international organizations in cooperation with the Government of Slovakia, and Slovakia had submitted a position paper to the Committee on the Elimination of Discrimination against Women with details on the investigation and the measures adopted, including the legislative changes. That Committee had decided that there were no grounds for investigation under article 8 of the Optional Protocol.

46. **The Chairperson** invited the members of the Committee to ask follow-up questions concerning the replies for issues 13 to 24 of the list of issues.

47. **Mr. Thelin** said that, with respect to the number of complaints filed against police officers in 2010, he would be happy to receive the statistics on the Prosecution Office and the Ombudsman in writing. He wondered if the Ministry of Internal Affairs, the Prosecution Office and the Ombudsman could also provide global figures on torture and ill-treatment for the 2006-2010 period so that the Committee could compare them with the figures provided for questions 13 and 15.

48. **Mr. Iwasawa** said that he understood that the Constitutional Court had not yet issued its decision on the motion under the Press Act, but the Committee was unable to grasp the issues involved and would therefore be grateful for an explanation.

49. **Mr. Koterec** (Slovakia) said that his delegation would obtain a written explanation of the issues involved in the motion from the Ministry of Culture, which was handling the matter. Summing up, he said that the meeting had been an efficient and useful tool for evaluating the human rights situation in Slovakia. The Government would give due consideration to the Committee's recommendations and would endeavour to take them into account in the next report.

50. **The Chairperson** agreed that the meeting had been constructive. The Committee welcomed the new Government's seriousness in facing up to Slovakia's human rights challenges, as illustrated, inter alia, by its establishment of the Council on Human Rights, National Minorities and Gender Equality. However, there remained many areas of considerable concern, dominated by the issue of the Roma. The Committee

would provide detailed concluding observations and recommendations and hoped that the renewed dialogue would help with the difficult task of putting Slovakia back on track on human rights.

51. *The delegation of Slovakia withdrew.*

The discussion covered in the summary record ended at 12.30 p.m.



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Summary record of the 2780th meeting

Held at Headquarters, New York, on Thursday, 17 March 2011, at 3 p.m.

Chairperson: Ms. Majodina

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Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Second periodic report of Serbia

This record is subject to correction.

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Serbia (CCPR/C/SRB/2, CCPR/C/SRB/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Serbia took places at the Committee table.*
2. **Ms. Jašarević-Kužić** (Serbia) said that the 2006 Constitution of the Republic of Serbia covered a wide range of human rights, and that the rules of international law and ratified international treaties constituted part of, and were directly applied in, the domestic legal system. Serbia was party to the seven core United Nations human rights treaties and had signed the Convention on the Protection of Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.
3. In the years covered by the report, the pace of legislative activity had accelerated, with passage of numerous laws and ratification of international conventions, including the Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings, and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
4. Since Kosovo and Metohija Province was administered by the United Nations Interim Administration Mission in Kosovo (UNMIK), Serbia was not able to implement and monitor application of the Covenant in that province, and the second report therefore did not include detailed information in that regard. Five years having passed since consideration of the 2006 UNMIK report on the implementation of the Covenant, she suggested that UNMIK should be asked to submit additional information. Serbia was ready to supply all available information, in order to contribute to the work of the Committee.
5. In the Constitutional and legal system of Serbia, everyone was equal and entitled to the same legal protection. Discrimination was prohibited on any grounds, and separate measures could be introduced with a view to ensuring the attainment of full equality by persons or groups of persons who were essentially in an unequal position.
6. Discrimination was defined as a criminal act in the Penal Code, which also prohibited promotion and incitement to hatred, violence and discrimination, as well as public threats of perpetration of criminal acts against persons or groups on the basis of personal characteristics.
7. In March 2009, the Law on Prohibition of Discrimination, which prohibited a wide range of types of discrimination, was adopted. Victims could initiate a lawsuit before a court of law or lodge a complaint with the Commissioner for Protection of Equality. Specific areas where discrimination occurred most often could be regulated separately. For example, the Law on Professional Rehabilitation and Employment of Disabled Persons provided for specific protection for that group, and a Strategy for Advancement of the Position of Disabled Persons had been adopted for the period 2007-2015.
8. The Law on Gender Equality defined in more detail the prohibition of gender-based discrimination and the rights of both sexes. The starting point for advancement of gender equality was the 2009 National Strategy for Improvement of the Position of Women and Advancement of Gender Equality, which laid out State policy with respect to elimination of discrimination against women. Other anti-discrimination documents and strategies covered human trafficking, assistance to refugees and internally displaced persons, the fight against HIV/AIDS, protection and prevention of violence against children and advancement of Roma.
9. Estimates indicated that the real number of Roma citizens might be higher than the figure of 108,193 indicated in the 2002 census. Dire poverty was their main problem, and the Strategy for Advancement of the Position of Roma and the Action Plan for its implementation encompassed various priority areas, including education, housing, employment and displacement. Local efforts included the drafting of strategic documents and the appointment of coordinators and advisers for Roma issues. Annual budget allocations were provided for ten ministries and the Commissariat for Refugees for that purpose.
10. The judicial system had undergone reform in 2008, with a reduction in the number of courts and judges, and the establishment of a Judicial Academy to train members of the judiciary.

11. The Constitution provided for a constitutional appeal of actions perpetrated by officials, to be brought after all other legal remedies had been exhausted. Other provisions of the Constitution required humane and dignified treatment of persons deprived of their liberty, an area also covered by the Law on Execution of Penal Sanctions.

12. In addition to the March 2009 ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, amendments and addenda to the Criminal Code in August 2009 stipulated harsher punishments for such offences.

13. Various laws prohibited hate speech, the displaying of Neo-Nazi and Fascist symbols, demonstrations and a variety of other actions directed towards propagation of those ideologies. With the ratification of the Convention on Cybercrime, use of computer systems for the promotion of ideas and theories that promoted or incited hatred and discrimination had been prohibited.

14. The Constitution and laws protected the rights of national minorities to full equality and preservations of their identities, including the right to protection from discrimination and equal participation in public affairs. Serbia had ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The Constitution and the 2009 Law on National Minority Councils allowed minorities to elect national councils for the purpose of exercising their rights to self-management in the areas of culture, education, information and language. The Council for National Minorities, established in July 2009, monitored cooperation between the minority councils and the competent organs of Government. Elections for 19 national minority councils had been held in June 2010. Separate laws regulated the exercise of minority rights, with measures being taken in specific areas, including participation of national minorities in the management of public affairs and in State administrative bodies. To that end, use of the languages of national minorities was being promoted in notices of public-sector vacancies and in administrative operations. Joint projects by State organs, non-governmental organizations (NGOs) and international institutions, conferences, seminars and sports events were fostering tolerance and intercultural dialogue. The State was continuing its efforts to strengthen its system of human

rights protection and to cooperate with international bodies dealing with those issues.

15. **The Chairperson** invited the Committee to pose queries on questions 1 to 16 of the list of issues (CCPR/C/SRB/Q/2).

16. **Mr. Thelin** noted, with respect to question 2 on the list of issues, that while the Covenant was directly applicable by the courts and legal institutions, the question concerning its invocation and application by or in the courts had not been answered. The reports submitted by the Belgrade Centre for Human Rights on 31 December 2010 and by the National Ombudsman on 16 February 2011 seemed to indicate that knowledge of the Covenant was overshadowed by awareness of the European Convention on Human Rights. He would like assurance that the Covenant would be better understood and taught, since if it was not known the Courts could not apply it.

17. He noted the excellent quality of the report submitted by the Office of the National Ombudsman, established in 2007. With respect to local ombudsmen, existing currently in only 10 per cent of communities, he wondered when all communities could be expected to have offices. The lack of local ombudsmen affected the monitoring of detention practices at police stations. He asked for information on the delineation of responsibilities, and noted the need for clarification on the allocation of resources.

18. **Mr. Flinterman**, turning to question 4, commended the Government for the steps taken to promote gender equality, including the Law on Gender Equality, the Law on Election of Deputies and the National Strategy for the Protection of Women. Noting, however, the continued gap between law and reality, he requested information on the resources used to implement gender legislation, practical measures and mechanisms implemented and to be implemented in order to ensure equal representation of women in public positions and actions taken to combat and dismantle persistent patriarchal stereotypes. Information on procedures available for women to report discrimination, the types of cases presented to date, the role of the Ombudsman, the existence of special measures for minority women to ensure their equal access to basic services, and equal access of minorities to Government positions would be helpful.

19. Turning to question 5 concerning domestic violence, he asked if the recommendation of the

Committee on the Elimination of Discrimination against Women that a specific domestic violence law should be adopted had been implemented. Information received indicated that the Family Law was not being implemented and the judiciary was still being lenient on perpetrators of domestic violence; there was a lack of coordination and exchange of information among officials. He asked if there were mechanisms that could contribute to the implementation of the Family Law and what measures were being considered in terms of training and the enforcement of restraining orders. What measures were being taken to encourage women to report domestic violence? While NGOs were providing help to victims, there was no system of Government support for NGOs. He asked what Serbia was doing to address the problem, in terms of plans for funding of shelters and centres, coordination with NGOs, and dissemination of information on the subject of domestic violence.

20. **Mr. Neuman**, noting the serious concern expressed not only by the Committee during its consideration of the State party's initial report but also more recently by the Ombudsman in his report of February 2011 with regard to the Roma minority and the exercise of their civil rights, said that he would like to know whether the State recognized the persistence of problems and, if so, what further measures it was taking to address them. With regard to the violent attacks against minorities referred to in the written replies, he asked for more information on the investigation, prosecution and sanctioning of such incidents.

21. Noting the Ombudsman's concerns regarding implementation of the Law on the Prevention of Discrimination against Persons with Disabilities, he said that updated information on the number of court proceedings initiated on the basis of the Law would be useful. It would also be interesting to know whether the reporting State had explored the reasons for its infrequent use by the courts or taken action to implement it. With regard to persons with mental disabilities, information had reached the Committee that courts often deprived individuals of their rights by relying only on the testimony of family members or expert opinions. Furthermore, it appeared that most children with special needs did not participate in the national public school system. He would like to know whether the current situation remained the same and, if so, how the State planned to make improvements. The

delegation should also clarify the status of the Law on the Prevention of Discrimination against Persons with Disabilities, specifically, whether it had been adopted in anticipation of the Convention on the Rights of Persons with Disabilities. If, on the other hand, it constituted national implementation of that Convention, it would be useful to learn whether new laws must be adopted in order to bring the legal system in line with the Convention.

22. **Mr. Salvioli**, referring to the recently adopted non-discrimination law (question 7 on the list of issues), asked which court had jurisdiction in cases of alleged discrimination. Additional information on any discrimination-related proceedings instituted to date and the results thereof would be welcome.

23. Turning to question 8 on the list of issues, he expressed concern at statements by NGOs and European and United Nations bodies according to which Roma continued to be the victims of discrimination. Serbia should indicate the practical effects of the legislative measures taken by the State thus far to address the issue. Indeed, it was difficult to understand that the situation had not improved significantly since the adoption of the non-discrimination law. The dire poverty and illiteracy of Roma populations made them even more vulnerable to discrimination, and thus was also a cause for concern. The practical obstacles that hampered exercise by Roma of their right to legal personality, without which they could not access many other basic rights, should be indicated. With regard to education, information had reached the Committee that many children in Roma communities were sent to special schools not for lack of ability, but for lack of language skills.

24. **Sir Nigel Rodley**, referring to question 11 (a) on the list of issues, asked whether the cases pending at the time at which Serbia had submitted its written replies had been finalized and whether those convicted were now serving their sentences. Given Serbia's recent violent history, the numbers of cases involved seemed quite low. Respected NGOs had suggested that there was a serious problem of bringing cases forward for fear by witnesses of being treated as traitors by the Ministry of the Interior; the delegation's comments would be appreciated in that regard.

25. Turning to question 11 (b) on the list of issues, he said that he failed to understand why the Special War Crimes Chamber had not received any requests for

investigation or raised indictments for criminal offences related to the corpses exhumed from the mass grave in Batajnica. Moreover, was there not sufficient evidence of a crime to justify sua sponte action by the Chamber?

26. Clarification would be appreciated regarding the reply to question 11 (c) on the list of issues according to which claims for indemnification had been directed to a civil action because injured parties had failed to specify their claims within criminal proceedings. Specifically, he asked whether said parties had failed to be explicit about their claims or had failed to make a formal complaint in the context of the criminal proceedings; if it was the latter, he would like to know what opportunity had been given to them in the first place to make claims in the context of those proceedings.

27. The reporting State should further clarify to what extent claims had to be made against perpetrators who were convicted pursuant to military crimes and whether claims could be brought against the State itself. The Committee had received information according to which the Belgrade First Municipal Court had reached a verdict in April 2009 rejecting a reparation claim against Serbia filed by the Humanitarian Law Centre on behalf of families of victims of crimes committed by the Serbian police because of the statute of limitations for a reparation claim. He would welcome comment on whether it was correct as a matter of law not to be able to sue a State because it was protected by a statute of limitations. He wondered if it might not be reasonable for the State to establish a special fund or body for reparations due when the State's responsibility was clearly engaged and in respect of offences for which a statute of limitations was hardly apposite.

28. Turning to question 12 on the list of issues, he enquired as to the reasons why the Accountability for Human Rights Violations Act had not been implemented in practice.

29. He welcomed the cooperation between the State party and the International Criminal Tribunal for the Former Yugoslavia (reply to question 13) and the development of real political will it represented. Nevertheless, he would be grateful for further details on the large quantities of information gathered by security services, as referred to in paragraph 70 (e) of the written replies, particularly as some sources had

suggested that those very services were not committed to arresting the two remaining persons whose surrender had been demanded by the Tribunal. He also wondered whether the Accountability for Human Rights Violations Act might have been useful in that regard.

30. He commended efforts to prevent abuses in penitentiaries but noted that less information was available regarding police detention. He expressed surprise at the statement in the written replies it had been determined that only 4 of 299 complaints against police officers had been founded, especially considering that they had been handled by the Internal Control Division of the Police. It would be useful to learn whether any external controls had been able to investigate such allegations. Any relevant information regarding questions 14 (d) and (e) on the list of issues should be provided.

31. Turning to question 15 on the list of issues, he asked for clarification on any existing statute of limitation on offences of torture. He welcomed the information that there was no statute of limitation in respect of crimes against humanity and other goods protected by international law but asked whether the same was true for war crimes. Clarification should also be provided as to what "other goods" were being referred to in the written reply. As for Operation Sabre, it would be useful to learn what measures had been taken with regard to the officers in respect of whom 12 complaints had been submitted.

32. **Mr. Bouzid**, referring to question 12 on the list of issues, asked whether the Commission for investigating accountability for human rights violations had been established yet. If so, the Committee would appreciate additional information on its composition and the nature of its decisions, whether binding or non-binding, and whether or not they were subject to appeal. It would also be interesting to learn whether, under Chapter V of the Accountability for Human Rights Violations Act, the sentences pronounced by the Commission could lead to the suspension of the functions of the persons concerned. Clarification on whether some human rights violations could be brought to the courts as crimes, as well as any relevant examples, would be appreciated.

The meeting was suspended at 4.25 p.m. and resumed at 4.55 p.m.

33. **Mr. Vujić** (Serbia), referring to the implementation of the Covenant, said that its provisions

had been transposed into national legislation. With regard to the implementation of the Covenant in the courts, in response to the Human Rights Committee decision in the *Bodrožić v. Serbia and Montenegro* case and the Committee against Torture decision in the *Ristić v. Yugoslavia (Serbia and Montenegro)* case, the Supreme Court of Serbia had reinstated the civil procedure for initiating indemnity claims against the State in cases where the statute of limitations had expired.

34. Although training for Serbian judges and prosecutors tended to focus on the European Convention on Human Rights, the Judicial Academy had recently developed training curricula that also covered the Covenant, protection against discrimination, gender equality and domestic violence for use in the regular and the continuing education programmes. The first judges to be trained using those curricula would enter the workforce in late 2012.

35. Serbian courts had adopted decisions that respected the spirit of the Covenant without directly invoking it. Meanwhile, the Constitutional Court had invoked the Constitution, the Covenant, the European Convention on Human Rights and other international conventions ratified by Serbia in its decisions. The constitutional appeal procedure had been declared an effective legal remedy by the European Court of Human Rights.

36. **Ms. Mohorović** (Serbia) said that national, provincial and local ombudsmen's offices had been established by different laws and regulations and no hierarchy existed among them. In 2009, the Office of the National Ombudsman had opened local offices in Preševo, Bujanovac and Medveda in South Serbia, as provided under the Law on the Ombudsman and had sent experts to Roma settlements to educate citizens about their rights and enable them to file complaints directly.

37. Funding for the Office of the National Ombudsman was allocated from the national budget and corresponded to the financial plan submitted by the Ombudsman. While not earmarked for the deputies of the National Ombudsman, funding remained available. Funds for the Office of the Provincial Ombudsman were allocated from the budget of the Autonomous Province of Vojvodina. The funding allocated for both offices had grown over the preceding years.

38. One of the four deputies of the National Ombudsman specialized in the protection of rights of

persons deprived of liberty. While Serbia had ratified the Optional Protocol to the Convention against Torture, it had not yet enacted a formal national preventive mechanism against torture. The Ministry of Human and Minority Rights had initiated an amendment to the law on the ratification of the Optional Protocol that envisaged the Office of the National Ombudsman assuming the role of national preventive mechanism against torture.

39. **Ms. Jašarević-Kužić** (Serbia) said that effectively the national preventive mechanism against torture already existed and the ministerial initiative would serve to formally designate the Office of the National Ombudsman in that role.

40. **Mr. Vujić** (Serbia) said that domestic violence was a criminal offence and was prosecuted ex officio under the Criminal Code. In addition, the recently adopted Family Law required that judges hearing cases involving domestic violence must specialize in family law and included provisions for the eviction of the perpetrator of domestic violence from the home as a measure of protection for the victims. There was an ongoing effort to improve the enforcement of the national legislative framework for combating domestic violence.

41. In addition to training prosecutors and judges, social workers and the police were also being sensitized to the issue of domestic violence. It was necessary to involve all of society in the protection and empowerment of the victims of domestic violence, who were often the only witnesses to the crime and frequently withdrew from the trial proceedings, making it hard to prosecute the perpetrators. The persistence of patriarchal stereotypes in Serbian society meant that domestic violence was being ignored. Serbia was committed to combating violence and discrimination and had initiated media campaigns to that effect.

42. Serbia had adopted the General Protocol on the protection of children against abuse and neglect based on the Law on Juvenile Criminal Offenders, which stipulated the obligation of the State and the judicial system to protect juvenile offenders and minors who were victims of abuse. It was not possible to lower the minimum penalty envisaged by the Criminal Code for the abuse and neglect of minors due to the gravity of those offences and the State's obligation to protect children against acts of violence.

43. **Ms. Mohorović** (Serbia) said that hotlines were available to provide counselling for victims of domestic violence but that few were free of charge. Shelters were available for victims of domestic violence and their children. Those services were offered mostly by NGOs and occasionally by local authorities and funded by international donors and local authorities. A number of safe houses for women had received initial funding from the Ministry of Labour and Social Policy from its Social Innovation Fund. In the Autonomous Province of Vojvodina, shelters had been opened in a number of cities with funding provided by the provincial and local governments.

44. A national hotline for children's issues, established and funded by the Ministry of Labour and Social Policy, had been in operation since 2005. The Ministry was also developing a strategy for combating and raising awareness of gender-based violence that included media campaigns, round tables, joint activities with local agencies that promoted gender equality and recognition of individuals who made special contributions to raising awareness of gender-based violence.

45. **Mr. Vujić** (Serbia) said that it was necessary to empower domestic violence victims in order to keep them from staying in the safe houses for too long. Women staying in the safe houses for longer than six months entered a vicious cycle that prevented them from returning to normal life.

46. The Prosecutor's Office had created a separate unit to ensure the protection of victims of domestic violence. Also, when cases involved children, judges ensured that they were introduced to the court setting in a considerate manner.

47. **Ms. Jašarević-Kužić** (Serbia) said that Serbia considered it a priority to address the continuing problem with internally displaced persons by improving their living conditions and providing them with access to personal documents, especially since Serbia had been included on the Schengen White List.

48. Internally displaced persons were Serbian citizens and enjoyed all of the rights set out in the Constitution, national laws and the United Nations Guiding Principles on Internal Displacement. All registered internally displaced persons from Kosovo and Metohija had been issued identification cards that had the same validity as the national identification card and granted

them access to education, health care, social protection and housing in collective centres as requested. Internally displaced persons, rather than refugees, now constituted the majority of those living in the collective centres. The Ministry of Human and Minority Rights, with assistance from the United Nations Development Programme (UNDP), had conducted a survey of internally displaced persons living in 42 informal collective centres to identify ways to improve their living conditions. Consequently, one such centre had been closed and funding had been provided by the Office of the United Nations High Commissioner for Refugees (UNHCR), Germany and the European Union that enabled a number of families to start living independently.

49. Internally displaced persons belonging to minority groups, such as the Roma, Ashkali and Egyptians, lacked personal documents and could not access public services. In an effort to simplify the procedure for obtaining personal documents, a new Law on Registers had been adopted. Internally displaced persons could turn to the Coordinator for Roma Issues of the Commissariat for Refugees of the Republic of Serbia for help with that procedure. The staff of the Ministry of Human and Minority Rights had conducted on-site visits to register both internally displaced persons and so-called "legally invisible" persons, the Roma people in particular, the majority of whom did not have citizenship status due to the lack of personal identification. To assist in that process, funds had been allocated for the computerization of registration records. In addition, records for the territory of the Autonomous Province of Kosovo and Metohija would be kept in Niš, Kragujevac, Kraljevo, Kruševac, Jagodina, Vranje and Leskovac. The exact number of persons without recognized legal personality was still unknown despite a study conducted by UNHCR. The Government believed that the amendment of existing laws and the simplification of the registration procedure, rather than the adoption of a new law, was the right solution to the problem.

50. **Mr. Vujić** (Serbia) said that the procedure for declaring a person unable to work was quite lengthy and complex, a fact that the European Court had noted in some of its verdicts. The procedure must be initiated by the interested party, whose case must then be reviewed by a number of experts before the court rendered its verdict. It was true that in some cases, though not all, the subject of the proceeding was not

consulted. Persons who were declared unable to work, whether due to a disability or another cause, and who had been the victims of a crime, had the right to take part in the procedure by giving a statement. Criminal acts were more severely punished if the victim was disabled, but in civil cases the voice of the disabled was heard less frequently. Such cases more often involved the elderly than children or youth.

51. Children with both mental and physical disabilities had been included in regular school programmes as of 2010, and funding for the initiative had been increased in 2011. It was part of a trend of inclusion, and some special schools were being closed. Moreover, independent living facilities were being established for persons with disabilities in Serbia's larger cities and would be expanded to other locations.

52. **Ms. Mohorović** (Serbia) said that guidelines had been adopted mandating additional health care and social services for pupils with disabilities, as well as textbooks in Braille, personal digital assistants and other technologies to help them better adapt to schooling. Access to school buildings and transportation for persons with disabilities were being improved, with funding expected to come from the national and local budgets, as well as from the World Bank and the European Union.

53. **Mr. Vujić** (Serbia) said that the reduction in ethnically motivated crimes was the result of harsher penalties, due in many cases to the increasing imposition of the maximum rather than minimum sentence. The general climate had changed, and ethnically motivated violence was now frowned on. That change had been encouraged by Serbia's highest-ranking officials and the media and, together with the changes in sentencing policies, had made Serbians far less tolerant of violence. Noting that people understood that violence led to violence, he underscored the need to prevent a chain of violence in which hooliganism, at sporting events for instance, might eventually result in ethnically based violence.

54. **Ms. Mohorović** (Serbia) underscored the importance of annual Government funding for the various strategies intended to help the Roma, including employment policies. The strategy appeared to be paying off, as the Roma had shown an increased interest in accessing employment support, including employment orientation training and job fairs. A number of public works programmes focused on hiring Roma.

55. **Ms. Jašarević-Kužić** (Serbia) said that the vast majority of so-called legally invisible persons were Roma and that the Government was working to register them. One Government working group specifically addressed the manner in which a lack of a fixed residence prevented Roma from gaining the legal foothold provided by official documentation. Recent efforts in that regard suggested that people who said they were not registered often in fact were. Serbia's ministries were working to address such legally invisible populations, including through field work. In addition, a new law had facilitated the registration of children whose parents were unknown, who were under the care of a guardian or who had been adopted.

56. **Mr. Knezević** (Serbia), said that four more enforceable rulings involving cases of torture had been handed down. One involved a case in which 200 prisoners of war had been tortured or subjected to inhumane and degrading treatment in Vukovar in November 1991. In connection with that case, 15 people had been sentenced to a total of 207 years in prison. In a separate torture case, one person had received a five year sentence, and in a third case, 18 people had been sentenced to a total of 323 years' imprisonment.

57. **Mr. Krstajić** (Serbia) said that there were 17 cases in investigative proceedings before the Belgrade Higher Court and 14 before the chamber of first instance. The investigation of war crimes was very important to the Government, and those war criminals whose sentences had been enforceable had already been imprisoned.

58. As for the Batajnica massacre, there had been only one request for a new investigation. Referring to the so-called Kosovo cases, he said that the problem was evident: in order to conduct an investigation on an exhumed body and assemble the details of that person's death, the person's identity and last place of residence had to be ascertained and someone must be found to provide other relevant information. In Kosovo, those tasks could only be undertaken in cooperation with the local law enforcement authorities. As for the "yellow house" case, involving the trafficking of organs of Serbs and other non-Albanians in Kosovo, Serbian law enforcement officials had not received any cooperation from their counterparts in Kosovo. The only solution was to establish an interregional cooperative body.

59. Laws had been amended to include witness-protection mechanisms in order to encourage witnesses

to testify. He himself had prosecuted war crimes cases in the Higher Court, and he assured the Committee that there was no instance of a witness having been prevented from enjoying such protections as long as they could state why they had been needed.

60. Turning to question 11 (b) on the list of issues, he said that according to Serbia's Code of Criminal Procedure, indemnity claims did not necessarily forestall civil proceedings. For example, such cases entailed a special problem of reimbursement. According to a Supreme Court decision, there were two aspects of indemnification: the first targeted the perpetrator, in which case there was no statute of limitation because the criminal act itself was not subject to the statute of limitations; in the second — in which the claim was forwarded to the State — a five-year statute of limitations applied under contract and tort law. While the Supreme Court decision was debatable, the newly established Supreme Court of Cassation had not yet taken a position on war indemnity claims. Several claims had been filed before it but they were on hold pending the outcome of several appeals that had been lodged. A resolution of the problem was therefore pending.

The meeting rose at 6 p.m.



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Summary record of the 2781st meeting

Held at Headquarters, New York, on Friday, 18 March 2011, at 10 a.m.

Chairperson: Ms. Majodina

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Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Second periodic report of Serbia (continued)

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Serbia (continued)
(CCPR/C/SRB/2, CCPR/C/SRB/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Serbia took places at the Committee table.*

2. **The Chairperson** invited the members of the delegation of Serbia to resume replying to the questions posed by Committee members at the previous meeting.

3. **Mr. Krstajić** (Serbia), responding to the Committee's request for clarification on how the prosecution of cases of inhuman and degrading treatment were subject to a statute of limitation, said that Serbia's Criminal Code set forth a definition of ill-treatment and torture. Although criminal prosecutions were subject to a statute of limitation, under article 108 of the Criminal Code, there was no statute of limitation for criminal prosecution and enforcement of penalty for genocide, crimes against humanity, war crimes against civilians, war crimes against the wounded and the sick, war crimes against prisoners of war, or for organizing or inciting genocide or war crimes.

4. **Mr. Vujić** (Serbia), in response to a question on witness protection, said that Serbia did everything in its power to ensure that witnesses called to testify in cases involving gross human rights violations were fully protected. Moreover, the families of victims of war crimes, including war crimes that had been perpetrated in Kosovo or Croatia, were invited to attend trials that were held in that connection, including trials held at the Belgrade War Crimes Court.

5. **Mr. Zivaljević** (Serbia), in response to a request for information on complaints made against police officers and on the suspension of officers under investigation, said that the organizational unit of the Ministry of the Interior investigated complaints about ill-treatment by police officers that were filed by citizens, in accordance with established procedures. If allegations of police ill-treatment were substantiated, the victims of that ill-treatment were invited to review actions taken in that regard and, if they were satisfied that those actions fully addressed their complaints, signed a declaration to that effect. If they were not satisfied, citizens were entitled to have their cases

reviewed by special committees that investigated complaints of ill-treatment by police officers. Serbia had established 26 of those committees within police administrations and 1 committee within the Ministry of the Interior.

6. The police were obliged to respond to citizens' complaints within 30 days. Citizens could also bring criminal charges at a competent court in connection with ill-treatment by the police. Although only a few complaints had been submitted in that manner, citizens could also file complaints with local police administrations. In 2010, a total of 208 out of 2,370 complaints filed with local police administrations had been substantiated. Police officers who perpetrated criminal offences were subject to criminal prosecution and were suspended until all relevant disciplinary action against them was completed. In Operation Sabre, criminal charges had been brought against one police officer and appropriate disciplinary action taken against other officers.

7. **Ms. Mohorović** (Serbia), responding to a question on the funds allocated to the Plan of Action for the Implementation of the National Strategy for Improving the Position of Women and the Advancement of Gender Equality, said that the Plan of Action aimed to address gender-based economic and representational inequality and combat domestic violence. Nearly €1.5 million had been allocated for the implementation of the Plan of Action in 2010 and €1.65 million in 2011. A further \$1.4 million had been specifically earmarked for efforts to combat domestic violence.

8. Turning to the issue of legislation to combat discrimination against women, she said that, with a view to increasing women's representation in decision-making bodies, Serbia had enacted legislation that provided for interim measures to be taken in connection with local and national elections; by law, at least 30 per cent of candidates in parliamentary and National Minority Council elections should be the underrepresented gender. Public authorities were also obliged to take interim measures to restore gender balance if less than 30 per cent of civil servants were the underrepresented gender. Over 20 per cent of parliamentarians at the national level, 27 per cent of municipal councillors, over 30 per cent of judges and almost 20 per cent of civil servants in Serbia were women.

9. Under anti-discrimination legislation, victims of discriminatory action could appeal to the Commissioner for the Protection of Equality, who investigated complaints and made recommendations thereon. If those recommendations were not acted on, the Commissioner was authorized to take steps to draw the public's attention to the act of discrimination that had occurred. Both the Commissioner and the victims of discrimination could, moreover, initiate legal proceedings before a competent court, which was usually the general court in the municipality in which the claimant or the respondent was resident. The Commissioner could file complaints on behalf of individuals, if the individuals concerned provided their written consent, or on behalf of groups, and, *inter alia*, sought to prevent further discriminatory action from occurring and to ensure that victims received redress.

10. Furthermore, in accordance with a ruling by the Supreme Court, complaints could be filed by individuals that had deliberately exposed themselves to discrimination with a view to testing the effectiveness of anti-discrimination legislation in force. Individuals could not, however, seek damages for discrimination in such cases. No data was currently available on the number of anti-discrimination complaints that had been filed.

11. **The Chairperson** invited members of the Committee to pose follow-up questions.

12. **Mr. Thelin** commended the fact that the curriculum of the Judicial Training Centre covered the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. He asked whether the Ombudsman of Serbia had received all the funding that he had requested. The Ombudsman had received 81 complaints regarding the rights of persons deprived of their liberty in 2009 and 189 such complaints in 2010. In the light of that dramatic increase, the Ombudsman needed to analyse why complaints were submitted. Furthermore, the Ministry of the Interior needed to conduct its own independent analysis and take appropriate action.

13. **Sir Nigel Rodley** requested further clarification on how the statute of limitation applied to offences under article 137 of the Criminal Code.

14. **Mr. Vujić** (Serbia) invited members of the Committee to take part in training courses at the Judicial Training Centre and said that more complaints

were being filed with the Ombudsman because persons held in detention were now more aware of their rights. Statistics from the Supreme Court administration department had revealed that approximately 70 per cent of complaints had been submitted by detainees who were not satisfied with the quality and quantity of the food they were receiving. The Committee against Torture had concluded that violence against detainees had not increased in Serbia and had noted that Serbia had implemented measures to ensure that any incidents of violence were investigated. The fact that more complaints were being filed indicated that individuals felt increasingly confident that they could defend their rights by appealing to the competent authorities.

15. **Ms. Stepanović** (Serbia) said that, although the Ombudsman had been appointed in 2007, his deputy for persons in custody had only started work in 2009. Brochures explaining how to submit complaints to the Ombudsman, together with the relevant complaint submission forms, had been made available to prisoners. The increase in the number of complaints received also indicated that persons held in detention were increasingly confident that the Ombudsman was an independent mechanism that could protect their rights.

16. **Ms. Mohorović** (Serbia) said that the Ombudsman drew up an annual budget that was then integrated by the Government into Serbia's national budget and submitted to Parliament for approval. In that regard, the Ombudsman had received all the funds that he had requested. Moreover, some of those funds had been returned to the Ministry of Finance in 2010 because the Ombudsman had hired fewer staff than anticipated.

17. **Mr. Vujić** (Serbia) said that, under legislation in force, the Government could not impose conditions on the Ombudsman and that, within the framework of efforts to ensure his independence, the Ombudsman must approve any Government-imposed conditions on his activities.

18. **Mr. Zivaljević** (Serbia) said that the Ministry of the Interior maintained an excellent relationship with the Ombudsman. The Ministry was aware that standards in detention facilities in police stations remained unacceptable and carried out an annual analysis of complaints received in connection with police officer misconduct. In 2010, following investigations into a complaint, proceedings against a police officer had been initiated and a detention facility closed.

19. **Mr. Krstajić** (Serbia) said that criminal prosecutions were subject to a relative statute of limitations. Under article 103 of the Criminal Code, the time period that must elapse before that statute of limitation could be invoked depended on the penalty prescribed by law for the offence in question. For example, if a prison sentence of between 30 and 40 years was prescribed for an offence, the statute of limitation was 25 years, whereas, if a sentence of 15 years was prescribed, the statute of limitation was 20 years. The date from which the limitation period was calculated was reset after every interruption in a case. However, under article 104 of the Criminal Code, an absolute statute of limitation came into effect after expiry of double the time period prescribed under the relative statute of limitation for the offence in question. Once the absolute statute of limitation came into effect in a case, criminal prosecution was no longer possible. Under article 137 of the Criminal Code, a prison sentence of up to eight years was imposed for the offence of ill-treatment and torture; for that offence, the relative statute of limitation was 10 years and the absolute statute of limitation was 20 years.

20. **Sir Nigel Rodley** said that he was taken aback that the gravest penalty for such a crime as torture was only 8 years — a matter raised also in the past by the Committee against Torture — and he wondered if there was any intention to increase the sentence to make it more reflective of the gravity of the crime, especially when other crimes were punishable in Serbia by 20 to 25 years.

21. **The Chairperson** invited the Committee to put questions to the delegation regarding questions 16 to 28 on the list of issues.

22. **Mr. Flinterman**, commending Serbia for having drawn attention to the problem of human trafficking (question 16 on the list) and for endeavouring to combat it, asked how many traffickers had been prosecuted, what the sentences had been, and how many cases had involved transborder trafficking; whether victims had been made aware of their rights by the provision of free legal assistance; what became of trafficking victims given temporary residence permits while their cases were being tried if in fact no trial was held or after the trial was over; how trafficked women were being encouraged to come forward to report their exploitation; and whether the Government would take over the role of providing support for the victims, currently being

furnished only by non-governmental organizations, or at least give the NGOs financial support.

23. He would appreciate more details regarding the treatment of prisoners (question 17): what medical and psychological services were available for detainees with disabilities, how prisoners were notified of their right to medical and legal services, and how the public at large was informed about prisoners' rights.

24. He welcomed the Government's efforts to address the obvious underrepresentation of members of minorities in government, public service and the judiciary (question 27). Information should be given about the strategies the Government was pursuing to include minorities in national, provincial and local government, the judiciary and the police force, and about any affirmative action on their behalf.

25. **Sir Nigel Rodley** asked what had been the real impact of the measures the Government had taken to relieve overcrowding in prisons (question 18) and when it thought the problem would finally be resolved to its satisfaction.

26. **Mr. Thelin** asked, in connection with question 19, why, in the course of the reform of the Serbian judiciary in 2010, it had been deemed advisable to reduce the number of judges by almost 15 per cent, a process which, moreover, had been characterized by both the Ombudsman and NGOs as somewhat arbitrary and not transparent. Also, he would like to learn more about the composition of the High Judicial Council (report, para. 333 et seq.), which had such a big role in the reform of the judiciary; and if the appointment of its members by Parliament risked politicizing it. The general situation in the courts in Serbia was not good, according to the Ombudsman: lengthy trials with many delays, absent judges, untimely or incomplete decisions, even attempts by a senior member of the executive to influence court proceedings. The whole judicial system seemed flawed and he wondered what the Government planned to do about it.

27. The written responses acknowledged (para. 100) that the War Crimes Prosecutor's Office often worked under pressure and threat, and it would be useful to know what the Government was doing to safeguard the full functioning of the Office and to prosecute those seeking to impede it. On a related point having to do with question 25 of the list of issues, the director of the Humanitarian Law Centre had been charged under the criminal defamation legislation for alleging that there

had been attempts to bribe the War Crimes Prosecutor's Office. He drew attention to the Committee's draft general recommendation on article 19 of the Covenant, paragraph 49 of which urged the decriminalization of anti-defamation laws so as not to stifle dissent.

28. He would like more information on how the Government was expanding free legal aid (question 21), currently available to only about 15 per cent of accused persons. The written replies to question 26 indicated that elections had been held for all the national councils of national minorities in 2010, but he would appreciate comment on reports that in Bosnia the official 50 per cent threshold of minority members had been raised to 66 per cent in order to make it difficult to set up the national council there.

29. Regarding the dissemination of the Covenant (question 28), he wondered how much of an impact NGO participation in the preparation of the periodic report had had on the final draft; in how many languages the text of the Covenant was disseminated and if it was available on the Internet, in libraries and the like, to give all citizens access to it; and whether the Covenant and the Committee's findings were brought to the attention of the legal community.

30. **Mr. Salvio**, referring to freedom of religion (question 23), asked whether military service in Serbia had now become voluntary by law (written replies, para. 104) and whether conscientious objectors who had left the country to avoid military service in the past would benefit from the general amnesty (para. 106). With reference to question 24, he wondered whether the legal distinction between traditional churches and communities and other religious communities and organizations might not lead to discrimination in the teaching of religion in the schools and in access to public services; and whether the Government intended to simplify the registration procedures for non-traditional religious communities in order to eliminate barriers that were incompatible with the Covenant.

31. **Mr. Neuman** said that the Committee was concerned by violence against journalists and human rights defenders in Serbia and the chilling of political criticism by prosecutions for defamations and other similar judicial proceedings (ques. 25). The written replies gave examples of crimes against freedom of expression between 2008 and 2010, and the Ombudsman and NGOs had provided others ranging from murder, in some cases unresolved, to injury to threats. It was very

important for the building of democracy for the press to discuss issues that certain segments of society or even the majority would prefer to ignore. In addition, violations against human rights defenders had been noted by the Council of Europe Commissioner for Human Rights against both lesbian/gay/bisexual/transgender individuals and their human rights defenders; and the Ombudsman's Office had been attacked with impunity on those same grounds. He would like details of any specific instances in which the government's response had gone beyond the arrest of some perpetrators of such violence to trials, convictions and sentencing.

32. Her welcomed the 2010 decision of the Constitutional Court to invalidate the amendments to the Law on Public Information allowing journalists to be fined for defamation (written replies, para. 118). It would interesting to know on what principles that decision had been based, and whether it had changed the court practice in defamation cases and the Government's regulation of the press, and also if any new legislation was planned.

33. **Ms. Motoc** asked how the Government was dealing with its Roma minority and what protections it was currently affording them.

34. *The meeting was suspended at 11.15 a.m. and resumed at 11.45 a.m.*

35. **The Chairperson** invited the delegation to continue its replies to oral questions put by members of the Committee in connection with questions 16 to 28 on the list of issues.

36. **Mr. Krstajić** (Serbia), while agreeing with Sir Nigel Rodley that a maximum prison sentence of eight years for such a heinous crime as torture seemed inadequate, said that the working group reviewing the Criminal Code would take that point into consideration.

37. **Mr. Živaljević** (Serbia), on the subject of question 16 concerning human trafficking, said that the Government had established a national action plan to combat that scourge. While some perpetrators and victims of human trafficking were foreign nationals, the majority were Serbian citizens. The most common form of abuse was sexual exploitation; many of the victims were children and minors. Criminal charges had been brought against 725 perpetrators in 2009 and 2010.

38. With regard to victims of Serbian nationality, the Government had set up protection and rehabilitation

programmes comprising continuing education, professional training and employment assistance, while foreign victims were either safely returned to their country of origin or allowed to stay in the country upon being granted temporary residence; those who did not have sufficient financial means to sustain themselves were provided with adequate accommodation, meals and basic living conditions.

39. The UN.GIFT Joint Programme to Combat Human Trafficking, developed by the United Nations High Commissioner for Refugees, the International Organization for Migration and the United Nations Office on Drugs and Crime in Serbia, had been established to operationalize the national action plan; it would strengthen national capacities and improve coordination within the national referral mechanism; create a sustainable framework for systematic prevention of trafficking in human beings among particularly vulnerable groups; strengthen the criminal justice responses of the Government of Serbia; and improve mechanisms for protection and reintegration of potential and actual victims of human trafficking.

40. In addition, October had been declared "Anti-Trafficking Month"; in cooperation with NGOs, awareness-raising activities had been organized and a special hotline had been set up to encourage victims to report criminal acts of trafficking. Lastly, as confirmed by the European Commission's Serbia 2010 Progress Report, Serbia had made some progress in fighting trafficking of human beings. Procedures to identify victims had been adopted and the number of identified victims had continued to increase, while the regional trend pointed towards a decrease in trafficking of human beings. Law enforcement authorities had remained active and regional and international cooperation had improved.

41. **Ms. Stepanović** (Serbia), replying to questions about prison conditions and the treatment of prisoners with disabilities, said that prisoners benefited from the same health services as regular citizens. Those with substantially impaired mental capacity were offered psychiatric treatment and confinement in a medical institution; most prisons had been retrofitted with ramps and toilets to accommodate inmates with physical disabilities. The Government had adopted a comprehensive strategy with a specific action plan and time frames to address the problem of prison overcrowding; the Criminal Code was being reviewed and prosecutors and judges were being educated to use

home detention as an alternative to imprisonment, and to recommend parole for prisoners who had served half of their sentence. A special judge would be appointed to monitor enforcement of sanctions and educate prison officials on the treatment of inmates; prison administration systems were being computerized to increase efficiency.

42. With regard to infrastructure, some prisons had been expanded and new ones were being built across the country with funding from both the Serbian Government and the Council of Europe Development Bank; they were slated for completion between 2011 and 2014.

43. **Mr. Vujić** (Serbia), in response to the query on the lack of transparency in the selection of judges, said that the number of judges had been reduced to reflect the new configuration and reduced workload of the courts. However, judges who had not been re-elected had the right to complain to the Constitutional Court of Serbia to have their case reviewed. The election process had been objective and transparent, with the list of candidates having been made public and some of them having campaigned openly, even posting their resumes on the website of the High Judicial Council.

44. The High Judicial Council was composed of five permanent members and eight invited members; the permanent members were the President of the Supreme Court of Serbia, the Republican Public Prosecutor and the Minister of Justice, all ex officio members; one lawyer elected by the Bar Association of Serbia and one member elected by the National Assembly; the invited members comprised six judges elected by the Supreme Court of Serbia, a prosecutor elected by the Deputy Republican Public Prosecutor, and another elected by district public prosecutors.

45. Turning to the new selection process, he said that first-time judges and prosecutors would be drawn from a list of graduates of the Justice Academy, which would be approved by the High Judicial Council and ratified by Parliament. With regard to concerns about the length of trials, judges were being trained, computers were being introduced into case management systems, and the laws governing civil and criminal procedures were being amended to expedite the administration of justice.

46. Lastly, with reference to the allegations about the statement made by the Secretary of State of the Ministry of Economic Development concerning the payment of workers' salary arrears delaying the

judicial process, he said that it was a rather unfortunate statement which had had no bearing on the case and had been denounced publicly by the judges and President of the Supreme Court of Serbia.

47. **Mr. Knežević** (Serbia) said that the duty of war crimes prosecutors was to investigate war crimes committed by their fellow citizens. In the area of the former Yugoslavia, all civilians, regardless of their ethnicity, felt that they had been victimized. They were very resistant to the prosecution of their own nationals; therefore prosecutors and judges were provided with uniformed and undercover security services to ensure their safety and that of their families.

48. Turning to the issue of freedom of expression and the case of Nataša Kandić, he said that the Office of the War Crimes Prosecutor had requested her to provide concrete evidence in support of her allegations. If the evidence supported the allegations, then there would be an investigation and those responsible would be held accountable. Defamation was not considered a criminal act and the intention was not to challenge freedom of expression. Rather, it was to avoid undermining the reputation of an office that had been positively assessed by the European Union and the Prosecutor at the International Criminal Tribunal for the former Yugoslavia.

49. **Mr. Vujić** (Serbia) said that work was ongoing to ensure that the right to representation was comprehensively upheld through the provision of free legal aid. The Ministry of Justice was drafting laws to provide legal aid in civil cases. While it was unclear how the aid would be financed and it was generally acknowledged that it was of no use to pass a law that could not be implemented owing to lack of funds, it hoped to submit in May a draft law requiring access to public defenders in civil cases, which would be in line with international treaty bodies.

50. A public defender could be appointed *ex officio* in serious criminal cases, but the court had not yet seen a need for it. A public defender was not required in less serious crimes but the defendant could request one and the State would decide on whether it was permissible. For example, people who did not pay taxes, including drug traffickers and money launderers, were not allowed free legal aid without showing evidence of having paid taxes. Amendments were being considered to ensure legal aid in all criminal cases; the hope was that the amendments would have been implemented by

the next report to the Committee. Lastly, juvenile offenders were required by law to be represented by a lawyer specializing in juvenile law.

51. **Ms. Mohorović** (Serbia) said that the Constitution guaranteed the right to conscientious objection and it was possible to substitute military with civilian service. The National Assembly had instituted voluntary military service as from 1 January 2011. The Amnesty Law exempted citizens from liability for criminal offences in respect of military service and from mandatory military service. It also guaranteed destruction of military records on request.

52. Turning to freedom of religion, she said that the Law On Churches and Religious Communities recognized a difference between traditional churches and religious communities and other churches and religious communities only in respect of the Ministry of Religious Affairs registration process. Churches and religious communities with centuries of history in Serbia were considered traditional and followed a shortened registration process because they had been registered in the past, while newly formed churches and religious communities, which had previously been regulated under federal laws but had not been required to register, had to submit additional documents during the registration process to prove their history of compliance with the laws of the Republic of Yugoslavia. Statements from their congregations to establish that they had met the required number of members were also required. Once the newly formed churches or religious communities had registered they were considered legal entities.

53. It was important to note that article 3 of the Law on Churches and Religious Communities stated that religious freedom could not be exercised in such a way as to endanger the right to life, rights of the child, personal and family integrity or property, or to provoke hatred, violence or intolerance. Registration allowed the Government to ensure compliance with the article and to ensure that different organizations were not using the same name.

54. **Ms. Jašarević-Kužić** (Serbia) said that attacks on human rights defenders and journalists were not tolerated. Investigations intended to bring the perpetrators to justice were carried out promptly. In the case of *Vreme* magazine contributor Mr. Anastasijević, whose apartment had been the target of a grenade attack, the President of the Republic had personally

visited the journalist and called for a full investigation. Following the attack on Mr. Pancic, another contributor to *Vreme*, the Ministry of the Interior was able to classify the attack as an act of terrorism. An investigation into the attack was ongoing. Arrests had been made in the case of the injured "B92" cameraman. Attacks on homosexual human rights defenders and journalists were usually perpetrated by neo-Nazi groups. Sixteen such groups had registered as civil organizations and efforts were underway to disband them, as by inciting violence and hatred they violated the Constitution.

55. Legal measures had been implemented to protect journalists as they carried out their duties. Indeed, according to article 138 of the Criminal Code, journalists enjoyed a higher degree of protection in respect of threats to personal safety. While there was clear will to fully protect human rights defenders and journalists, improvement was needed in the investigation and sanctioning processes.

56. Turning to national minority councils, she said that all minorities were equally represented; out of 20 positions, 19 had been elected for the first time, 16 by direct vote and 3 by electoral assemblies. As was to be expected, there were some irregularities in the first election cycle since the passage of the Law on the Protection of the Rights and Freedoms of National Minorities, which would be addressed. A second election had been held for the Bosnian National Minority Council at the request of the Bosnian community because it had wanted to participate with three election lists, which was not permissible under the rules of procedure. The rules were amended and a second election was held to respect the will of the people.

57. **Ms. Mohorović** (Serbia) said that candidates for positions in public service, the judiciary or the police forces were not required to disclose their nationality. While central staff records were required by law, the data did not include nationality; therefore no database tracked minority numbers. However, some organizations maintained internal records. The Autonomous Province of Vojvodina, which had the most minorities, tracked public sector employees based on nationality and knowledge of minority languages. When electing judges, the High Judicial Council took into consideration the ethnic composition of the population the elected judge would be serving. The census law had established a reporting system to include open questions on minorities and languages.

58. **Mr. Živaljević** (Serbia) said that while there was no official information on minorities, the Ministry of the Interior had statistical data, which was included in paragraph 123 of the Replies from the Government of Serbia to the list of issues (CCPR/C/SRB/Q/2/Add.1).

59. **Mr. Thelin** said that it was not appropriate to invoke the law against defamation in cases of war crime investigations and freedom of expression. In its written response to outstanding questions, he would like the delegation to clarify the mechanisms used to address claims for reparations, including what ministries and other bodies were involved.

60. **Ms. Jašarević-Kužić** (Serbia) said that the delegation had responded to questions to the best of its ability and it would be glad to provide detailed written responses to outstanding questions. While resources were limited, the Government was committed to harmonizing the legal system with the European Union and international bodies while addressing urgent situations to the best of its ability. The concluding observations would be closely examined and fully met.

61. **The Chairperson** said that the Committee appreciated the honesty of the delegation and welcomed its plans to advance human rights, in particular in respect of the Roma, internally displaced and legally invisible persons. The Committee was also concerned at the gap between the existing laws to protect human rights and the reality on the ground. Lastly, the Committee remained very concerned about the use of criminal defamation legislation and violence against journalists and human rights defenders.

The meeting rose at 1 p.m.



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Chairperson: Ms. Majodina

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General comments of the Committee

Draft general comment No. 34 on article 19 of the Covenant

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11-27133 (E)



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The meeting was called to order at 3.05 p.m.

General comments of the Committee

Draft general comment No. 34 on article 19 of the Covenant (CCPR/C/GC/34/CRP.5)

1. **The Chairperson** invited the Committee to begin its second reading of draft general comment No. 34 (CCPR/C/GC/34/CRP.5) on article 19 of the Covenant.

2. **Mr. O'Flaherty**, speaking as rapporteur for the draft general comment on article 19, said that States parties, national human rights institutions, non-governmental organizations (NGOs), Special Rapporteurs of the Human Rights Council and members of academia had responded to the Committee's request for comments. Over 300 specific drafting suggestions had been received, which was unprecedented in the Committee's history. The majority of the commentaries indicated broad satisfaction with the draft and were extremely helpful.

3. **Mr. Iwasawa**, recalling the informal consultation the Committee had held with States parties in July 2009, said that he had expected more of them to submit comments. He was pleased with the number of comments that had been submitted by NGOs and international human rights institutions.

4. **Mr. O'Flaherty** said that he would introduce each paragraph and provide the third-party commentary and proposals received for that paragraph before the Committee began its discussion.

Paragraph 1

5. *Paragraph 1 was adopted.*

Paragraph 2

6. **Mr. O'Flaherty** said that two suggestions had been received for additions at the end of the third sentence. An organization associated with the University of Fribourg had asked for the phrase "and for the consolidation and promotion of peace" to be added, while Professor Rolf H. Weber, an electronic media expert at the University of Zurich, had proposed the addition of the phrase "and for the digital information society".

7. **Ms. Chanet**, supported by **Mr. Thelin** and **Mr. Iwasawa** said that she did not support the proposed changes, objecting in particular, to the use of

the word "peace", which was a very political and ambiguous term. Its inclusion might also be seen as a move to interpret article 20 of the Covenant, which talked about propaganda and war.

8. **Mr. Rivas Posada** said that the addition of the word "peace" in paragraph 2 would be difficult to justify as it was but one of many aspects of the freedom of expression.

9. **Mr. Fathalla**, supported by **Mr. Bouzid**, proposed adding the words "are essential to any society and contribute positively to its national stability" at the end of the second sentence. The change sought to reflect the events taking place in the Arab world, which stemmed partly from the lack of freedom of opinion there, and to link the right to freedom of expression to its contribution to stability in society.

10. **Mr. Thelin** wished to know the rationale behind the inclusion of the word "national", which could lead to inadvertent interpretation effects.

11. **Mr. Fathalla**, supported by **the Chairperson**, speaking in her personal capacity, proposed removing the word "national". He reiterated that the disorders taking place in the South Mediterranean countries had occurred because of the absence of the freedom of opinion.

12. **Ms. Chanet** said that the notion of "stability" did not exist in the Covenant and an inverse interpretation was possible, whereby the freedom of expression might be permitted only once stability was achieved. Political and philosophical concepts that did not tie in with article 19 of the Covenant should not be introduced into the text. She was not in favour of any changes to the paragraph.

13. **Mr. Rivas Posada** said that he did not support the addition because it evoked a political concept and could be interpreted as being prejudicial to reform movements.

14. **Mr. Iwasawa** and **Mr. O'Flaherty** said that paragraph 2 should be adopted as it stood.

15. *Paragraph 2 was adopted.*

New paragraph 2 bis

16. **Sir Nigel Rodley**, supported by **Mr. Thelin**, **Ms. Chanet**, **Mr. Rivas Posada**, **Mr. Iwasawa** and **Mr. Fathalla**, proposed a new paragraph 2 bis, to take account of the principles of transparency and

accountability, that would read: "Freedom of expression is a necessary condition for realizing the principles of transparency and accountability that are in turn essential for the promotion and protection of human rights".

17. *New paragraph 2 bis was adopted.*

Paragraph 3

18. **Mr. O'Flaherty** said that the initial draft of the general comment had included a reference to "economic, social and cultural rights" as being among those rights that depended, to a large extent, on the freedom of expression. Many commentators had asked for the restoration of that phrase. The revised second sentence would thus read: "The freedom of opinion and expression form a basis for the full enjoyment of a wide range of civil, political, economic, social and cultural rights".

19. **Mr. Bouzid** said that the Committee had pointed out in general comment 17 that the rights provided for in article 24 of the Covenant were not the only recognized rights of children who, as individuals, benefited from all of the rights stated in the Covenant. He reiterated the request he had made at a previous meeting (CCPR/C/SR.2674) to include a reference to article 24 along with the other articles already listed.

20. **Mr. O'Flaherty**, speaking in his personal capacity, said that he welcomed both changes.

21. **Mr. Flinterman** said that it should be made explicit that civil, political, economic, social and cultural rights were at issue.

22. **Mr. Thelin** said that the text would gain nothing from the inclusion of the phrase "social, economic and cultural rights"; the existing reference to human rights was sufficient. While not opposed to the idea of expanding the enumeration of articles, he wondered if doing so would cause commentators to ask why other articles were not also mentioned.

23. **Ms. Chanet** said that the reference to social, economic and cultural rights, if included, would need to be placed in a separate sentence at the end, rather than in the middle, of the paragraph, so that the list of articles could be kept together with the references to the freedom of expression and the rights to freedom of assembly and association.

24. She expressed reservations with regard to the inclusion of a reference to article 24, because its provisions were not directly related to article 19. Article 24 also included the right to "measures of protection" that was somewhat antinomic to the right to freedom of expression because the child had a lesser freedom of expression by virtue of being protected. While the Convention on the Rights of the Child stipulated the right of the child to be heard in the context of divorce proceedings, the Committee had yet to examine how article 24 of the Covenant pertained to the right of the child to freedom of opinion or expression.

25. **Sir Nigel Rodley** said that articles 18 and 25 inherently required freedom of expression and opinion and freedom to participate in government, but the connection to article 17 was less obvious, and it was not clear why it was particularly relevant for minorities. Mr. Bouzid's suggestion was that those other Covenant rights also inherently contained article 19 values, but article 24 did not reflect that. He preferred Ms. Chanet's proposed wording "other human rights".

26. **Mr. Iwasawa** said that he saw the link with articles 18 and 25, but had difficulty with articles 17 and 24. With regard to article 27, the words "the right to profess and practise their own religion" might be the link, but it was not very strong. With respect to the second sentence, the civil and political rights dimension was very significant. Freedom of expression and opinion formed the basis for article 25, as a necessary condition for the exercise of political rights. The right to vote ensured the existence of a democratic society in which other civil and political rights were guaranteed. In that sense, freedom of opinion and expression formed the basis for full enjoyment of civil and political rights but also of economic, social and cultural rights. Thus "economic and social rights" should not be excluded, but "freedom of expression as the basis for a democratic society" should be retained.

27. **Mr. Fathalla** said that he would prefer to leave paragraph 3 as it stood, but with the deletion of the reference to article 17, which had nothing to do with guaranteeing freedom of opinion or expression. He preferred to leave the wording "other human rights", without specifying economic and social rights.

28. **Mr. Thelin** said that there was a link between articles 17 and 18, dealing with privacy and belief.

29. **Mr. Neuman** said that he agreed with Mr. Thelin with respect to article 17. There were contradictory pressures to make the draft increasingly specific while at the same time keeping it concise and general. By replacing "economic and social rights" by "other human rights", the Committee had expressed itself inclusively if not precisely.

30. **Mr. Salvioli** said that a reference to economic, cultural, and social rights would go hand in hand with the trends in freedom of expression demonstrated by special bodies that had used those rights as a basis for the further enjoyment of all other human rights and would not go beyond the provisions of the Covenant.

31. **Mr. O'Flaherty** said that he agreed with Mr. Iwasawa on the need to retain the reference to the essential freedom of civil and political rights, as those rights were foundational. Referring to the second sentence, he suggested the following formula: "The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of civil and political rights, as well as of economic, social, and cultural rights."

32. **Mr. Rivas Posada** said that the proposal made by Mr. O'Flaherty would satisfy all the viewpoints expressed, albeit not completely. He saw no justification for including the reference to article 17, as it was not in the same category as freedom of opinion or freedom of religion, electoral freedom and other rights. While all the articles were interrelated, it was his view that the reference should be taken out, and that minimalist language was preferable to expansive language.

33. **Mr. Fathalla** supported by **Mr. Thelin**, said that he saw the proposal as too limited, because it involved eliminating the more general aspect, namely, human rights in general, and restricting it to two groups of rights, namely, civil and political rights and economic and social rights.

34. **Sir Nigel Rodley** said that he saw a problem with the words "as well as", because they could make "economic, social, and cultural rights" sound subsidiary or prior. He liked the idea of having "civil rights" in the text as a basis not only for civil and political rights but also for economic and cultural rights.

35. **Ms. Waterval** said that she supported leaving the wording as it stood as "other human rights" covered economic and cultural rights.

36. **Ms. Keller** said that she could go along with the rapporteur's proposal. She was in favour of including social and economic rights and deleting the reference to article 17.

37. **The Chairperson**, noting the need to keep the draft as concise as possible, said that she also preferred to leave paragraph 3 as drafted; "other human rights" would seem to include everything.

38. **Mr. O'Flaherty** said that there seemed to be general agreement to remove the reference to article 17 and there did not seem to be strong support for the idea of adding a reference to article 24. The first sentence would therefore remain unchanged, with the deletion of the reference to article 17.

39. **Ms. Chanet** said that much of article 17 related to freedom of expression, especially modern forms of expression, and therefore it would not be reasonable to delete the reference.

40. **The Chairperson** said that, in her opinion, the retention of the article 17 reference did not detract in any way from the paragraph.

41. **Sir Nigel Rodley** said that he agreed with Ms. Chanet that a connection did indeed exist, but the basic problem with article 17 was that it was a counterweight to, rather than a possessor of, article 19 rights.

42. **Mr. O'Flaherty** said that he saw no great harm in the deletion of the article 17 reference. Its deletion did not exclude "expression" from article 17, because the list was indicative rather than limitative.

43. **Mr. Iwasawa**, turning to the third sentence, said that there was a need to show that there was a link between freedom of expression and the right to vote. He therefore proposed adding at the end, "integral to the right of freedom of association and assembly and the exercise of the right to vote".

44. **Mr. O'Flaherty** said that it was his understanding that the article 17 reference would be removed from the first sentence, the second sentence would remain unchanged, and the words "the exercise of the right to vote" would be added to the end of the third sentence.

45. *Paragraph 3 was adopted as amended.*

Paragraph 4

46. **Mr. O'Flaherty** said that three States, namely, Japan, Canada, and Australia, had asked for the deletion of paragraph 3. He was opposed to that deletion because, in his view, it was based on straightforward practice deriving from general comments 24 and 29.

47. **Mr. Neuman** said that he was comfortable with paragraph 4. It had been asserted that paragraph 1 of article 19 was non-derogable, one of the major reasons being that a derogation could never be necessary, given the nature of the right to freedom of opinion. He was nevertheless concerned that the Committee might be engaging in expansive interpretations of the meaning of that right. In calling it a non-derogable right the Committee might be expanding it into fields beyond the area under discussion, namely, the right to hold opinions, which was the non-derogable right. It did not necessarily extend to other issues, such as, for example, the right never to disclose one's opinions. As long as the right was defined in such a way that the statements in paragraph 4 were true, however, he did not object to its inclusion.

48. **Mr. Flinterman** asked for clarification why, in the second line of paragraph 4, the words "would be incompatible" were used instead of "is incompatible", and why in the first sentence the words "and thus impermissible" had been added.

49. **Mr. O'Flaherty** said that that the words "would be" referred to the conditionality of whether such a reservation existed, not to the content or form of the reservation.

50. **Sir Nigel Rodley** said that the concerns of Japan, Canada, and Australia merited attention. He posed the case of a person who in the past had expressed opinions that were, for example, genocidal or racist, had never retracted those opinions, but was not continuing to express them. Questions might arise about such a person playing certain roles in society, and the person might therefore be denied access to certain types of employment. That situation could well fall within articles of the Covenant. The subject at issue there was restrictions, but the same principle might apply to derogations, particularly in an emergency threatening the life of the nation. Public perception of such persons performing certain roles

while no longer explicitly expressing those opinions could be a problem for States.

51. **Mr. Iwasawa** said, in response to Mr. Flinterman, that the wording in the original text was, "the reservation was not permitted". To avoid discussion of the type that had surrounded article 24, the language "would be incompatible" had been chosen.

52. **Mr. Thelin** said he felt the paragraph should remain as it stood, with addition of the wording suggested by Mr. Flinterman.

53. **Mr. O'Flaherty** said that he found it clear that if there were to be such a reservation, it would be incompatible.

54. *Paragraph 4 was adopted as amended.*

Paragraph 5

55. **Mr. O'Flaherty** said that Japan would like paragraph 5 deleted, while the National Centre for Human Rights in Jordan would like it retained and strengthened by means of the addition of a phrase at the end of the sentence, which would then read, "... a general reservation to the rights set out in paragraph 2 would be incompatible with the object and purpose of the Covenant, and States should review any such reservations with a view to their withdrawal".

56. **Sir Nigel Rodley** said he was not in favour of the proposal. That was basically the Committee's recommendation to States most of the time in respect of most of their reservations, and he felt that the Committee did not need to be so specific. The addition did not strengthen the text.

57. **Ms. Chanet** said that she would like clarification on the need to refer, in paragraph 5, to other rights guaranteed under the Covenant.

58. **Mr. O'Flaherty**, supported by **Sir Nigel Rodley**, said that the reference to other rights guaranteed under the Covenant had been included in order to recall the infrastructural nature of the freedom of expression vis-à-vis other rights, as established in paragraph 3 of the draft general comment.

59. *Paragraph 5 was adopted.*

Paragraph 6

60. **Mr. O'Flaherty** said that Japan had suggested replacing the word "must" with the word "should" in

the last sentence of the paragraph. Canada had proposed adding the phrase "in a manner consistent with the Covenant" after the word "ensure", which, as the rapporteur, he understood to be an expression of concern regarding the application of the Covenant in the private sphere. Speaking in his capacity as an expert, he said that while he did not see a need for the proposed amendments, he was not opposed to either one.

61. **Mr. Iwasawa** said that he supported both proposed amendments.

62. **Sir Nigel Rodley** said that he was not in favour of replacing the word "must" with the word "should" in paragraph 6; he suggested changing the beginning of the last sentence of that paragraph to read "The obligation also involves States parties ensuring".

63. **Mr. Thelin** said that should the Committee decide to replace the word "must" with "should" in paragraph 6, it would have to make similar changes throughout the draft general comment for the sake of consistency. Moreover, the ensuring of such rights was a duty of States parties under the Covenant; he was therefore against the amendment proposed by Japan. He failed to see the value in the additional language proposed by Canada and was therefore also against that amendment.

64. **Mr. Neuman** said that he would like to be sure that the phrase "in so far as" in paragraph 6 meant "to the extent that" and not "because".

65. **Sir Nigel Rodley** suggested modifying the last sentence of the paragraph to read "The obligation also requires States parties to ensure", so that it would be understood as relating to the previous sentence, rather than as the introduction of an additional obligation.

66. **Mr. O'Flaherty** said that he understood "in so far as" to mean "to the extent that" in paragraph 6 and suggested replacing the former wording with the latter for clarity.

67. **The Chairperson** said she took it that the Committee wished to amend the last sentence of paragraph 6 to read "The obligation also requires States parties to ensure that persons are protected from any acts of private persons or entities that would impair the enjoyment of freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities."

68. *It was so decided.*

69. *Paragraph 6, as amended, was adopted.*

Paragraph 7

70. **Mr. O'Flaherty** said that Australia had expressed concern that the word "enshrined" might convey a monist view and thus pose a problem for dualist States.

71. **Mr. Iwasawa** proposed replacing the word "enshrined" with the phrase "are given effect".

72. *Paragraph 7, as amended, was adopted.*

Paragraph 8

73. **Mr. O'Flaherty** said that Australia had suggested that the first sentence of paragraph 8 should reflect the Committee's recent decision regarding focused reports based on replies to lists of issues prior to reporting. Japan had proposed replacing the word "must" with the verb "should" in the last sentence, an amendment he himself supported, for the sake of consistency within the paragraph.

74. **Mr. Iwasawa**, referring to the suggestion by Australia, proposed replacing the phrase "in their periodic reports" with the phrase "in their initial report and, where applicable, subsequent periodic reports".

75. **Ms. Chanet** said that she had understood Australia to be referring to the new reporting procedure under which periodic reports would no longer be required. In that case, it seemed most appropriate to refer to reports, where applicable and where the Committee requested them.

76. **Ms. Keller** said that specific reference should not be made to focused reports in the first sentence of paragraph 8, as they related to a separate mechanism.

77. **Mr. Rivas Posada** said that while focused reports should be taken into account in the first sentence, the word "reports", specifically mentioned in article 40 of the Covenant, should not be eliminated.

78. **Mr. Fathalla** proposed replacing the words "in their periodic reports" with "in accordance with its procedure", the latter of which would be understood to refer to any reporting procedure of the Committee.

79. **Mr. Thelin** said it was important not to deviate from article 40 of the Covenant, which clearly referred to reports. He therefore proposed replacing the words "in their periodic reports" with the words "in their

reports within the obligation under article 40", without referring specifically to the various reporting procedures.

80. **Mr. O'Flaherty** suggested replacing the words "in their periodic reports" with the words "in their reports pursuant to article 40 of the Covenant".

81. *Paragraph 8 was adopted as amended.*

82. **Ms. Chanet** suggested that paragraphs 7 and 8 might be combined if the number of paragraphs in the final draft made it necessary to do so.

83. **The Chairperson** said she took it that the Committee wished to combine paragraphs 7 and 8.

84. *It was so decided.*

85. *The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.*

Paragraph 9

86. **Mr. O'Flaherty** said that the Norwegian Centre for Human Rights had suggested replacing the word "including" with the phrase "including but not limited to", a proposal he was in favour of applying throughout the draft general comment.

87. **Mr. Neuman** said that he would like clarification regarding the third sentence of the paragraph. Specifically, he would like to be sure that the reference to "discrimination" simply meant that any differential treatment had to be justified, rather than that there should be no differential treatment on the basis of opinion despite an asserted justification.

88. **Mr. O'Flaherty** said that an immediate solution to the concerns raised by Mr. Neuman was simply to delete the reference to discrimination. The beginning of the third sentence would thus read, "No person may be subjected to the impairment of any rights under the Covenant". Requiring someone to disclose his or her opinion did not necessarily impair that person's right so long as it was a legitimate action. Moreover "any rights under the Covenant" included the right to non-discrimination.

89. **Mr. Rivas Posada** said that he supported the suggestion by Mr. O'Flaherty. The reference to discrimination in the paragraph was indeed ambiguous and unnecessary.

90. **Mr. Iwasawa** said that he also supported that amendment. As for the suggestion by the Norwegian

Centre for Human Rights, the word "including" was by definition not limiting; he therefore suggested leaving only the word "including" throughout the draft.

91. **Mr. Thelin** said he did not support that amendment for reasons of succinctness.

92. *Paragraph 9, as amended, was adopted.*

93. **Mr. O'Flaherty** said that both Australia and Poland had raised concerns regarding the wording of paragraph 10, since there could be occasions when it might be necessary to compel the disclosure of an opinion. Poland had said that the prohibition referred to therein should be without prejudice to measures undertaken for statistical research or other justified public purposes, a viewpoint which he did not find compelling. Australia had evoked a scenario wherein persons in certain professions might have a well-founded suspicion of imminent or current harm to a child or where there were requirements for medical practitioners to disclose any objection to providing a medical service to a patient. To him, that prefigured the possibility of policing conscientious objections to military service. Nevertheless, as rapporteur, his view was that the wording of paragraph 10 should not be changed because, in the case of the issues mentioned by Australia, it would be easy to distinguish between professional judgement and *forum internum*.

94. **The Chairperson**, speaking in her personal capacity, said that she was not convinced by the Australian argument, insofar as the example given concerned the disclosure of facts rather than opinions. She had not read Poland's objection to the word "coerced", but was nonetheless in favour of keeping that word.

95. **Mr. Neuman** said that in his view, there were some circumstances when compulsion of the disclosure of an opinion could be appropriate, such as when an expert witness refused to give an opinion related to a subject within his or her area of testimony. The word "opinion" was extremely broad and there were certain circumstances, involving subjects and regulatory concepts outside the realm of religious and political opinions, in which compelling someone to express an opinion might be appropriate. He also took issue with the logic of the sentence, which read "Since freedom to express one's opinion necessarily includes freedom not to express one's opinions, article 19, paragraph 1, prohibits any action to compel the disclosure of an opinion." Freedom to express one's opinion was not

absolute but rather subject to restriction under article 19, paragraph 2. That contradicted the prohibition on any action to restrict the freedom not to disclose one's opinion and it was not logical for a converse right to be more protected than the right from which it seemed to have been derived. The freedom to express or not to express one's opinion was covered under article 19, paragraph 2, subject to restriction under article 19, paragraph 3, and that freedom was not necessarily non-derogable, while in article 19, paragraph 1, it was. He was therefore concerned by the overly expansive interpretation of article 19, paragraph 1. The right in question did exist but would be more properly located in article 19, paragraph 2, rather than in article 19, paragraph 1, subject to restriction and possibly non-derogable.

96. **Mr. Iwasawa** said that he shared the concerns expressed. The wording of the last part of paragraph 10 should be more nuanced.

97. **Sir Nigel Rodley** said that the wording "coerced effort" lacked cogency. The Committee routinely asked States to shape opinion in matters of discrimination, for example, and it was presumably the element of coercion that was problematic. An example elucidating the meaning of coercion in that context would be welcome. He proposed that the beginning of the second sentence of paragraph 10 should be phrased: "Since freedom of opinion necessarily includes freedom not to express one's opinion". He noted that expert witnesses were free to refuse to testify, albeit at the risk of undermining their credibility. In his view, a better example of coercion would be a capital case in which persons who had been compelled to serve as jurors were then compelled to state their opinion on the death penalty.

98. **Mr. O'Flaherty** said that the first sentence of paragraph 10 had been quoted from a case involving brainwashing in prison. It could be reworded to read: "Any form of effort to coercively shape opinion is prohibited." He supported Sir Nigel Rodley's proposed rewording of the second sentence of paragraph 10.

99. **Ms. Chanet** said that the first sentence of paragraph 10 was useful in preventing the criminal prosecution of persons for their opinions and that its current wording should be retained. She was aware that the second sentence referred more to paragraph 2 than to paragraph 1 of article 19. In the example of the jury

cited by Sir Nigel Rodley, article 19, paragraph 1, could not apply without the restrictions in paragraph 3.

100. **Mr. Rivas Posada** said that article 19, paragraph 1, referred exclusively to holding an opinion and not to the expression thereof. The example of a campaign to change prison inmates' opinions had nothing to do with the expression of their opinions but rather the changing of the opinions held by them. The question was whether the second sentence of paragraph 10, concerning the freedom not to express one's opinions, should be expressed in a less emphatic way.

101. **Mr. O'Flaherty** proposed eliminating the second part of the second sentence of paragraph 10 and adopting the following new wording: "Freedom to express one's opinion necessarily includes freedom not to express one's opinion."

102. **Mr. Iwasawa** suggested modifying Mr. O'Flaherty's proposed wording to read "Freedom of opinion necessarily includes freedom not to express one's opinion."

103. **Ms. Chanet** said that the wording of article 19, paragraph 1 ("Everyone shall have the right to hold opinions without interference") was valid both in the negative and the affirmative and there was therefore no need to speak of "freedom of expression". She proposed retaining the current wording, except that the rest of paragraph 10 of the draft general comment should be applied to article 19, paragraph 2.

104. **Mr. Neuman** proposed either accepting Mr. O'Flaherty's suggestion or moving the second sentence of paragraph 10 to the "Freedom of expression" section.

105. **Mr. Fathalla**, supported by **Mr. Thelin**, said that Mr. O'Flaherty's wording should be adopted because it was the clearest wording proposed thus far.

106. **Mr. O'Flaherty** said that the wording that had received majority support was "Freedom to express one's opinion necessarily includes freedom not to express one's opinion."

107. **Ms. Chanet** said that the expression of an opinion, referred to in article 19, paragraph 2, should not be confused with the fact of holding an opinion. She proposed the wording "Any form of effort to force someone to hold an opinion or not to hold an opinion is contrary to article 19, paragraph 1." Without such

language, individuals would be forced to express their opinions.

108. **Mr. O'Flaherty** said that the proposal was to retain the first sentence of paragraph 10 while widening its scope in order to address Ms. Chanet's concern. The proposed wording was "Any form of effort to coerce the holding, the not holding or the shaping of opinion is prohibited."

109. A non-governmental organization had raised the concern that paragraph 10 appeared to refer only to coercive action by the State. Citing the example of religious leaders, it had wondered about the responsibility of the State to ensure that non-State actors did not coerce. In view of that concern, he asked whether any Committee member wished to further modify the first sentence of paragraph 10.

110. **Mr. Thelin** said that, while that concern was important, the inclusion of wording about the responsibility of States parties to prevent coercion by third parties could lead to a counter-interpretation unless that wording were also included in other parts of the general comment. He proposed that the text should be adopted with the wording last proposed by the rapporteur.

111. **The Chairperson** noted that there was no support for amending paragraph 10 to take into account the responsibility of State parties to prevent coercion by third parties.

112. *Paragraph 10 was adopted, as amended.*

Paragraph 11

113. **Mr. O'Flaherty** said that there had been multiple requests to retain the reference to commercial advertising, although New Zealand had asked that it should be accorded a lower level of protection than other forms of expression. The proposed amendment would be to remove the square brackets from the words "and commercial advertising".

114. **Ms. Chanet** said that the square brackets should indeed be removed.

115. **Mr. Iwasawa** said that he agreed that the level of protection for commercial advertising could be lower than for other forms of expression.

116. **Sir Nigel Rodley** said that he shared the concern of New Zealand. Although he believed that the Committee had arrived at the right conclusion

regarding the case of *Ballantyne et al. v. Canada*, involving the use of the English language in commercial advertising in Quebec, it had done so on the basis of a right to expression through commercial advertising that did not necessarily appear adequate to the issue at hand. The abuse of commercial advertising was a problem, especially when it metamorphosed into political advertising. He proposed slightly attenuating the right to commercial advertising by ending the third sentence of paragraph 11 with the words: "teaching and religious discourse", to be followed by a deliberately vague sentence that would read "It may also include commercial advertising."

117. **Mr. Neuman** said that using the decision in *Ballantyne* as a supporting citation in paragraph 11 was problematic insofar as that decision had explicitly stated that commercial advertising was judged by a standard no lower than that applying to other forms of speech. If the proportionality analysis conducted by the Committee under article 19, paragraph 3, were to involve different levels of protection for different kinds of speech, then the general comment should note that fact. He shared the view that commercial advertising should not be protected as strongly as any other form of speech. Citing *Ballantyne* as support, however, raised the expectation that commercial advertising was protected just as strongly. He wondered whether temporarily omitting the reference to commercial advertising would be advisable. Since the Committee's lists were inclusive, omitting commercial advertising would not deny the right to expression through that medium. Alternatively, the Committee could explain the standard to be applied to that form of expression, perhaps when it was addressing the proportionality standard at a later date. At the very least, it might be advisable to omit the *Ballantyne* citation in order to avoid endorsing the level of protection that that decision had accorded to commercial advertising.

118. **The Chairperson** said that if the Committee wished to accord a lower level of protection to commercial advertising, then deleting the *Ballantyne* citation might provide a solution. The Committee could also adopt the wording proposed by Sir Nigel Rodley, namely: ending the third sentence of paragraph 11 with the words: "teaching and religious discourse", to be followed by the sentence "It may also include commercial advertising", without square brackets.

119. **Mr. O'Flaherty** said that Japan had requested that canvassing should be removed from the list of

protected types of expression, commenting that some restrictions on canvassing were warranted in an electoral context. The list in paragraph 11 consisted only of typologies of expression, however, and all forms of expression could be limited pursuant to paragraph 3 of article 19. Consequently, he recommended that the term "canvassing" should be retained.

120. Further, an academic had suggested that the word "views" should be replaced by the word "expression" in the phrase "The scope of paragraph 2 embraces even views that may be regarded as deeply offensive". A confidential commentator had proposed an amendment to the phrase that currently read: "although such expression may be restricted in accordance with the provisions of article 19, paragraph 3, and article 20". The amended phrase would be placed in a separate sentence beginning with "Such expression may only be restricted in accordance with".

121. A final amendment, suggested by a number of commentators, would be to include in the typology of the paragraph a reference to "expression regarding one's sexual orientation and gender identity". That proposal concerned an important human rights issue and should be thoroughly discussed.

The meeting rose at 6 p.m.